



2005 Court Clerk Training Institute

CRIMINAL COURTROOM
PROCEDURES, MISDEMEANORS AND
FELONY COMPLAINT PROCESSING



ADMINISTRATIVE OFFICE
OF THE COURTS

EDUCATION DIVISION/CENTER FOR
JUDICIAL EDUCATION AND RESEARCH

TABLE OF CONTENTS

TAB 1 - GENERAL CRIMINAL INFORMATION

A. CRIMINAL CASE INFORMATION

1. Definitions.....	7
2. The Most Common Codes Used in Criminal Matters	8
3. How Felonies, Misdemeanors, and Infractions come to the Preliminary Jurisdiction level of the Superior Court	8
4. How Felonies come to the Felony Trial Jurisdiction level of the Superior Court	8

B. ACCUSATORY PLEADINGS AND THEIR COMPONENTS

1. The Pleadings.....	9
2. The Components	9
3. Amended Pleadings	10
4. Prior – Felony Cases	10
5. Prior Misdemeanor Charges	12
6. Complaint Filed	13

C. SUPERIOR COURT ARRAIGNMENT – PRELIMINARY JURISDICTION (PC 988, PC 989)

1. Arraignment	13
2. Elements.....	14
3. Six Possible Pleas (PC 1016).....	14
4. Probable Cause.....	16
5. Demurrer	16
6. Mutual Discovery Orders.....	17
7. Setting of Dates	17
8. Arraignment Review	19
9. Elements for an Arraignment Flow Chart.....	20
10. Felony, Misdemeanor Comparison Chart	21

D. DOCKET- MINUTE ENTRIES

1. Definition and Statute Requirements	22
2. Minute Order Form	22
3. Preparation	23
4. Components	23
5. Case Information	23
6. Body of Minute Order.....	23
7. The Particulars	24

E. CUSTODY STATUS

- 1. Definition of Custody25
- 2. Release Orders25

F. BAIL

- 1. Definition26
- 2. Types of Bail26
- 3. Findings after verdict (PC1166).....27
- 4. Bail Exoneration27
- 5. Bail Forfeiture27
- 6. Own Recognizance Release28
- 7. OR Revocation.....28

G. WARRANTS

- 1. Arrest Warrant28
- 2. Bench Warrant30
- 3. Bail Setting (PC 815a)31
- 4. Forthwith vs. Held31
- 5. Attachment of Defaulters - Civil Bench Warrant32
- 6. Summons.....32

TAB II – CRIMINAL CASE PROCESS**H. DISPOSITIONS**

- 1. Definition34
- 2. Terminal Sentences / Probation34
- 3. Probation34
- 4. Imposition of Sentence Suspended35
- 5. Execution of Sentence Suspended35
- 6. Purpose of Probation.....35
- 7. Terms and Conditions35
- 8. Negotiated Plea36
- 9. Waiver of Rights36
- 10. Consequences of a Guilty Plea36

I. DRIVING UNDER THE INFLUENCE – Mandatory Minimum Sentence

- 1. 1st Offense – VC 23152 (a) and (b)37
- 2. 1st Offense – DUI Enhancements38
- 3. 2nd Offense – within 10 years VC23152 (a) and (b)a.....39
- 4. 2nd Offense – DUI Enhancements40
- 5. 3rd Offense – VC 23152 (a) and (b).....41
- 6. 3rd Offense – DUI Enhancement42

TAB III – CRIMINAL HEARINGS**J. PRETRIAL HEARINGS**

1. Pretrial Motions	43
2. Time for Filing.....	43
3. Motion Hearings	44
4. Minute Order Contents	44
5. Common Pretrial Motions.....	45
6. Common Motions	45

K. PRETRIAL MOTIONS BY “CASE LAW” NAMES

Aranda Motion	47
Buker Motion	47
Eleazer Motion.....	47
Evans Motion	47
Faretta Motion.....	48
Hitch Motion	48
Trombetta Motion	48
Kelly/Frye Motion	48
Kraft Motion	48
Rochin Motion	48
Marsden Motion.....	48
Murgia Motion	49
Pitchess Motion.....	49
Rost (or Speedy Trial) Motion.....	49
Serna Motion.....	50
Twiggs Motion.....	50
Wade/Gilbert Motion	50

L. LIST OF COMMON PRETRIAL MOTION BY CATEGORY

1. Suppression Motions.....	51
2. Discovery Motions.....	51
3. Dismissal Motions	51
4. Protective Motions.....	52
5. Miscellaneous Motions	52

M. PRETRIAL CONFERENCE/READINESS

1. Benefits	53
2. Steps in Negotiations	53
3. Outcome.....	53
4. Readiness Conference Review.....	55

N. CHANGE OF PLEA EVENTS

1. Plea of Guilty.....	56
2. Defendant Inquires	56
3. Waivers.....	56
4. Acceptance of Plea	56

TAB IV – CRIMINAL TRIALS**O. TRIAL MINUTES**

1. Trial Sequence	59
2. Minute Heading	60
3. Body of Minutes	61
4. Minute Closings.....	62

P. TRIAL PROCESS

1. Types of trials	62
2. Jury Trial sequence	62
3. Jury trial process	63
4. Court trial process.....	63
5. Preparation for Jury Trial.....	64
6. Motions in Limine.....	65
7. Jury Selection Methods (CCP 206 and CCP 237)	66
8. Jury Preparation	67
9. Jury Introduction.....	67
10. Jury Selection.....	68
11. Types of challenges.....	68
12. Swearing the Jury.....	70
13. Selection of Alternate Jurors (CCP 234)	70
14. Jury List	70
15. Jury Admonishment – PC 1122	71
16. Opening Statements	71
17. Evidence Phase	72
18. Motion for Judgment of Acquittal	73
19. Closing Argument.....	74
20. Jury Instructions.....	74
21. Jury Deliberations.....	75
22. Alternate Jurors.....	75
23. Jury Notes	76
24. Verdict/Mistrial.....	76
25. Polling.....	77
26. Mistrial.....	77
27. Post Verdict Matters	78
28. Motion for New Trial.....	78
29. Sentencing/Judgment.....	78

TAB V – DOMESTIC VIOLENCE INFORMATION**Q. DOMESTIC VIOLENCE**

1. Definition	80
2. Domestic Violence Filing	80
3. Arraignment	81
4. Pretrial	81
5. Mandatory Minimum Sentence	82
6. Protective Order	83
7. Post Judgment	84
8. Mandatory Sentence Reference Charts	85

TAB VI – PROPOSITION 36/PC 1210**R. PROPOSITION 36 / PC 1210**

1. Filing of the Complaint	87
2. Eligible Felony/Misdemeanor Complaints	87
3. Drug Treatment defined	88
4. Program Entry Points	88
5. Violations of Probation	89
6. Eligibility Determined at Probation Violation Proceeding – Sentence Modification	90
7. Eligibility Determined at PC 1000 Fallout Proceeding – Sentence Suspended	90
8. Found Guilty at Trial	90
9. Compliance	90

TAB VII – DEFFERED ENTRY OF JUDGEMENT**S. DEFERRED ENTRY OF JUDGMENT CASES**

1. Qualifications	91
2. Program Entry Points [PC 1000.1, 1000.2, 1000.3]	91
3. Local Drug Court	92
Relevant Code Section	93
West’s Annotated California Codes – Penal Code 1210.1	94

TAB VIII – PRELIMINARY EXAMINATION**T. PRELIMINARY EXAMINATION HEARINGS**

1. Preliminary Examination Hearing	98
2. Results	98
3. Preliminary Examination Minutes	99
4. Waiver of Preliminary Hearing	101

TAB IX – OATHS

U. OATHS.....102

APPENDICES

TAB X - APPENDIX A, CRIMINAL GLOSSARY

TAB XI – APPENDIX B, GENERAL GLOSSARY

TAB I - GENERAL CRIMINAL INFORMATION

A. CRIMINAL CASE PROCESS

1. Definitions

Criminal Action (PC 683) – The proceeding by which a party charged with a public offense is accused and brought to trial and punishment.

Crime (PC 15) - A public offense committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction either of the following punishments:

- a. Death
- b. Imprisonment
- c. Fine
- d. Removal from office, or,
- e. Disqualification to hold and enjoy any office of honor, trust or profit in this State.

Felony [PC 17(a)] - a crime that is punishable with death or by imprisonment in the state prison.

Misdemeanor [PC 17(b)] – Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by:

- a. Imprisonment in county jail not to exceed 1 year (or otherwise prescribed by law)
- b. Fine not to exceed \$1,000.00, or
- c. Both.

Infraction - A crime not punishable by imprisonment. If charged with an infraction, a person is not entitled to a trial by jury. [PC 19.6] **Maximum fine \$250**

Arrest – An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person. (PC 834)

2. Most Common Codes Used in Criminal Matters

On the state level, the Legislature has the duty of defining criminal behaviors and their consequences in the Codes of Law.

- a. Penal Code
- b. Health and Safety Code
- c. Vehicle Code
- d. Welfare and Institutions Code
- e. Business and Professions Code
- f. Harbor and Navigation Code
- g. Fish and Game Code
- h. Evidence Code

3. How Criminal Cases are filed in Superior Court (Preliminary level)

- a. Defendant is arrested and transported in custody to court within 48 hours excluding Sunday/Holidays. (Felony and Misdemeanor cases) (PC 825(A)(1).)
- b. Defendant is arrested and released on his/her own recognizance. [Felony - PC 1270, PC 1318.1(a), (b); Misdemeanor - PC 853.6]
- c. Defendant is arrested and posts bail to appear in court. [Felony and Misdemeanor - PC 1269b]
- e. Defendant is arrested and signs a citation agreeing to appear in court. [Misdemeanor - PC 853.6; Infraction PC 853.5]

4. How criminal cases are filed in Superior Court (Felony trial level)

- a. Preliminary Hearing (Held to Answer) – Information
- b. Indictment Grand Jury – (Filed in Superior Court)
- c. Certified Plea (PC859a) – Certificate of Magistrate

B. ACCUSATORY PLEADINGS AND THEIR COMPONENTS

1. The Pleadings

a. Complaint – A document submitted by the prosecutor and filed in a preliminary level court that lists and describes the alleged offenses committed by the defendant (PC740). (Can be original citation issued by peace officer), stating the accusations(s) against a defendant. It is composed of the charged counts, enhancements and prior convictions, if any

Infractions – PC 853.5

Misdemeanors – PC853.6

Felonies – PC 806

b. Information – A document submitted by the prosecutor and filed in a felony trial court, which lists and describes the alleged offenses committed by the defendant (PC 949/PC739).

c. Indictment – An accusation by a grand jury charging a person with a crime (PC 889).

d. Charge - A formal statement of the accusations against a defendant (may be any of the above.).

“Wobbler” – An offense that can be charged as a felony or misdemeanor; final plea or imposition of sentence will determine level of offense.

“Wobblette – An offense that can be charged as misdemeanor or infraction; final plea or imposition of sentence will determine level of offense.

2. The Components (PC950)

- a. The title of the action specifying the name of the court to which the same is presented, and the names of the parties.
- b. A statement of the public offense or offenses charged therein.

- Count – Each individual accusation of a violation of a code section that is set forth in the accusatory pleading.
- Enhancement – An allegation added to a count, which, if proven true, increases the basic sentence for that count.
- Special circumstances, if proved true, would warrant the death penalty or life imprisonment without the possibility of parole. (PC 190.2 series)

3. Amended Pleadings

- a. An amended accusatory pleading may be filed by the District attorney (PC1009).
- b. The amendment may be effected by:
 - Interlineations (write in change, initial, date of amendment)
 - Filing of amended Complaint, Information, or Indictment
 - Filing of amendment to Information/Indictment

4. Priors - Felony Cases

- a. Allegation added to a case based on previous felony convictions, which, if proven, either increases the basic sentence or affects eligibility for probation. These types of priors include but are not limited to the following;

➤ **Types of Priors Alleged:**

- No Probation Prior - an allegation that the defendant has been previously convicted of a felony and therefore cannot be granted probation if convicted on this felony or there are limitations on the court's power to grant probation. (PC1203 (e)(4); PC1203.8; (PC1203.07 (a)(11)
- Prison Prior - each previous felony conviction that resulted in a prison sentence. This allegation carries an additional term of one year. PC 667.5(b)
- Serious Felony – any person who has been convicted of a serious felony who previously has been convicted of a serious felony shall

receive an additional term of 5 years to be served consecutive and in addition to the sentence imposed by the court for the present offense. Charges that qualify as “serious felonies” are listed in PC 1192.7 & PC 667. (a)(1)

- Violent felony – any person convicted of a violent felony with a prior violent felony conviction shall receive an additional term of 3 years to be served consecutive and in addition to the sentence imposed by the court for the present offense. Charges which qualify as “violent felonies” are listed in section PC 667.5 & (PC667.5 (a)
- Strike Prior – a prior charged under PC667(b)-(i) and PC1170.12 (a) – (d) alleging a serious or violent felony prior conviction which if proven will authorize higher sentencing possibilities.
 - a) 1st strike – serious or violent felony conviction that standing alone has no present significance. It will become significant if the defendant suffers a second felony conviction (whether or not the present offense is a serious or violent felony conviction.)
 - b) 2nd strike – punishment for current felony conviction is doubled (PC667 (d) & (e)(1); PC1170.12(c)(1)
 - c) 3rd strike – punishment for current felony conviction is the maximum of the following 9PC667(e)(2); PC1170.12(c)(2)

Specifics for 3rd strike convictions;

- ❖ Triple the Base Term
- ❖ Life imprisonment with minimum 25 years
- ❖ -Term determined by the court pursuant to PC 1170 for the underlying conviction, including any enhancement.

Theft prior - an allegation that defendant has been previously convicted of a theft crime under PC666 (petty theft, grand theft, auto theft, burglary, car jacking, robbery or felony receipt of stolen property) and subsequently convicted of a petty theft will result in additional sentencing penalties, specifically, imprisonment in the county jail not exceeding one year, or in the state prison.

Auto Theft with a prior – an allegation that the defendant has been previously convicted of auto theft under VC10851, or felony grand theft of a vehicle, motor vehicle, or construction equipment as defined in the Penal Code, or a vessel as defined in the Harbor and Navigation Code. A subsequent conviction of this theft will result in additional sentencing penalties, specifically, imprisonment in the state prison for a term of two, three, or four years, and a fine of \$10,000. (PC666.5)

Drug Prior (HS 11370.2) – an allegation that the defendant has been previously convicted of, or for each prior felony conviction of conspiracy to violate Section 111351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.6, 11380, 11380.5 or 11383. Any conviction of the section will result in additional full, separate, and consecutive three - year term, whether or not the prior conviction resulted in a term of imprisonment.

5. Misdemeanor Prior

a. An allegation added to a case based on a previous misdemeanor. A conviction, which if proven, increases the basic sentence or makes the subsequent filing a felony. Types include:

1. Subsequent Convictions within 10 years result in additional sentencing penalties:
 - VC 23152 (a), (b) - [4th offense felony filing]
 - VC 23153 (a), (b) - [3rd offense felony filing; DUI causing bodily injury; 3rd offense = felony filing]
2. Subsequent Convictions within 7 years result in additional sentencing penalties:
 - VC 14601 (A) - [Driving under suspended license for reckless driving]
 - VC 14601.1 (A) - [Driving under suspended license]
 - VC 14601.2 (a), (b) – [Driving under suspended license for driving under the influence]
 - VC 14601.4 – Driving under suspended license and causing bodily injury]

3. Subsequent Convictions for PC 314.1 (lewd or obscene conduct) will result in a felony filing/conviction
4. PC 666--Prior convictions of specified theft offenses may result in additional sentencing penalties and felony filing

6. Complaint Filed

- a. Written Complaint filed by Prosecuting Agency to commence criminal process. (Felonies—PC 806 - Misdemeanors—PC 853.6 - Infractions—PC 853.5)

**C. SUPERIOR COURT ARRAIGNMENT (Preliminary Jurisdiction)
(PC 988, PC 989)**

1. Arraignment

- a. An arraignment - is the first criminal hearing in the Superior Court at the preliminary jurisdiction level. At the arraignment, the defendant must be advised of the charges against him/her and may enter a plea. On Felony cases, the defendant **must** be present [PC 977(b)(1)]. On Misdemeanor and Infraction cases, an attorney may appear without the defendant. [PC 977(a)(1)]
- b. The arraignment must be made by the Court, or by the clerk or prosecuting attorney under its' direction. It consists of the following:
 - Advising defendant of constitutional rights
 - Reading or waiver of reading the accusatory pleading
 - Delivering a true copy of accusatory pleading to the defendant on felony cases. Delivering a true copy of accusatory pleading to the defendant at his/her request on misdemeanor cases
 - Appointment of counsel for indigent defendants (PC 987)
 - Asking defendant to enter a plea

Note: If defendant fails to respond, the Court shall enter a plea of not guilty on defendant's behalf. [PC 1024]

2. Elements

- a. Determining defendant's true name and date of birth.
- b. Appointment/re-appointment of counsel (PC 987.2)
- c. Reading of the accusatory pleading (or waiver of reading)
- d. Delivering a true copy of the accusatory pleading to the defendant
- e. Advising defendant of constitutional rights
- f. Asking defendant to enter a plea or having counsel enter not guilty plea on his/her behalf (PC 1017, PC1024, PC 1025)

3. Six Possible Pleas (PC 1016)

a. Guilty

- Definition – A formal admission in court as to guilt, which a defendant may make if he or she does so intelligently and voluntarily. (*Black's Law Dictionary*)
- Effect – No trial on the issue of guilt is necessary. A trial on the issue of penalty may be held on cases in which special circumstances are alleged.

b. Not Guilty

- Definition - a plea entered by the accused to a criminal charge.
- Effect – Since the defendant has denied the charges, the case will be set for trial to determine the defendant's innocence or guilt.

c. Nolo Contendere

- Definition – "I will not contest it." A plea in criminal court, which has similar legal effect as pleading guilty. The defendant does not admit or deny the charges, though a fine or sentence may be imposed. (*Black's Law Dictionary*)
- Effect – A nolo plea cannot be used against the defendant in a civil action based upon the same acts. This plea is subject to

the approval of the court. After the court approves the plea, the court will find the defendant guilty.

d. A Former Judgment of conviction or acquittal of the offense charged (PC 687)

- Definition – a person cannot be tried for the offense more than once; this is fundamental, common law and constitutional right of the defendant affording protection against his being again tried for the same offenses. (Black's Law Dictionary)
- Effect – The court must hold a hearing to determine the validity of the claim. The issue is "Is the prior conviction or acquittal true?" If yes, the prosecuting attorney may move to dismiss the case or the court must dismiss the case. If the issue is not true, the defendant must enter a new plea.

e. Once in Jeopardy

- Definition – A phrase used to express the condition of a person charged with a crime who has once already, by legal proceedings, been put in danger of conviction and punishment for the same offense.
- Effect – The court must hold a hearing to determine the validity of the claim. The issue is "Was the defendant previously in jeopardy for the same offense?" If yes the prosecuting attorney may move to dismiss the case or the Court must dismiss the case. If the issue is not true, the defendant must enter as new plea.

f. Not Guilty by reason of Insanity

- Definition – A plea entered by the accused denying he committed the alleged charges since he was insane at the time the crime was committed.
- Effect – Case proceeds on the not guilty plea and on the presumption that no other plea (reason of insanity) was entered. If the defendant is found guilty, then the case proceeds on the issue of the sanity of the defendant at the time the crime was committed.

4. Probable Cause Determination [PC991]

If the defendant is in custody at the time he appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant shall determine whether there is probable cause to believe that a public offense has been committed and the defendant is guilty thereof.

- Motion may be made orally without notice.
- the court may grant a continuance for good cause not to exceed 3 court days before holding the hearing.
- If motion is denied, (finding of probable cause), the court must set the matter for trial.
- if motion is granted, (finding of no such probable cause), the court must dismiss the complaint and discharge the defendant.
- within 15 days of the dismissal of a complaint pursuant to this section the prosecution may re-file the complaint. A second dismissal pursuant to this section is a bar to any other prosecution for the same offense.

5. Demurrer [PC 1004 et seq.]

a. A Demurrer is an objection, in writing, which raises issues of law as to the sufficiency of the accusatory pleading and specifically states the grounds of objection. The grounds stated may be that:

1. The offense was not within the jurisdiction of the court.
2. The pleading does not conform to the rules.
3. More than one unrelated offense is charged (PC 954).
4. Legal justification or excuse exists.
5. The facts do not constitute a public offense.

b. Ruling:

1. Overruled: (the defendant must plead)

2. Sustained:

- **With leave (time) to amend** - The demurrer is sustained. If the defect can be remedied, the prosecutor must amend the accusatory pleading within 10 days. If not done timely, action is dismissed.
- **Without leave (time) to amend** - The demurrer is sustained and no amendment is permitted. The action is dismissed

6. Mutual Discovery Orders (PC 1054 et. Seq.)

- a. Counsel is mandated by statute to conduct timely pretrial discovery.
- b. Purpose of the statute is to limit the need for judicial enforcement of discovery rules.

7. Setting of Future Dates (CRC 4.100)

a. Felony Cases

1. Readiness Conference/Felony Disposition Hearing/Pretrial
2. Preliminary Hearing within 10 court days [PC 859b; PC 871.6]
3. A trial date, within 60 days of arraignment (PC 1049.5, PC1382)

b. Misdemeanor Cases

1. Jury Motion/Pretrial/Motion Hearings
2. Jury/Court Trial within 30 days if defendant is in custody.
3. Jury/Court Trial within 45 days if defendant is at liberty

[Cal. Const. Art. I, Section 15;PC 686.1]

c. Infraction Cases

1. Court Trial within 30 days if defendant is in custody

2. Court Trial within 45 days if defendant is at liberty

[Cal. Const. Art.I, Section 15;PC 686.1]

NOTE: CCP 12a - Computation of Time. The time in which any act provided or required by law is to be computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

8. Arraignment Review

- a. Defendant is to be served with a copy of complaint.
- b. Defendant's true name is determined.
- c. Counsel can be appointed if defendant is not represented.
- d. Defendant is read the complaint or waives reading.
- e. Defendant is advised of his constitutional rights.
- f. Defendant enters a plea.
- g. Court assigns dates for pretrial conference and/or trial/preliminary hearing.
- h. Misdemeanor/Infraction - Waiver of time if trial is set beyond statutory period.
- i. Felony - Waiver of time if preliminary examination hearing is set beyond 10 court days / 60 calendar days.
- j. Defendant ordered to return and released on bail, O.R., or remanded to custody.

OR

Bench Warrant is ordered and issued for defendant's failure to appear at arraignment.

9. Elements for an arraignment

RIGHTS:	Constitutional guarantees of due process of law	Right to Counsel Right to Speedy Trial Right to Confront and Cross-Examine Witnesses Right to Subpoena Witness on Own Behalf Right Against Self-Incrimination Right to Present Evidence Right to Trial by Jury (or Court) Right to Reasonable Bail Right to Reasonable Time to Answer the Charges
PLEA:	Defendant's response to a formal charge	Guilty Not Guilty Nolo Contendere (No Contest) Former Judgment of Conviction or Acquittal Once in Jeopardy Not Guilty by Reason of Insanity
WAIVER:	Intentionally, knowingly and voluntarily giving up of specific rights	Waiver of Counsel Waiver of Time Waiver of Jury Trial Waiver of Court Trial Waiver of Personal Appearance - Felony [PC 977(b)] Waiver of Personal Appearance - Misd. [PC 977(a)]
MOTION:	Requests made to the Court	Motion to Reduce Bail Motion to Dismiss Motion to Release on Own Recognizance
ORDER:	A directive or command of the Court	Order Granting Motion to Reduce Bail Order to Release Defendant on O.R.

10. Felony, Misdemeanor Comparison

FELONY REVIEW:	MISDEMEANOR REVIEW:
<p>Felony committed</p> <p>If defendant remains in custody, arraignment must be within 48 hours, excluding Sundays and holidays [PC 825 (a)(1)]. A felony complaint is filed [PC 806]</p> <p>The defendant may post bail to appear at a later date [PC 1269b]</p> <p>The defendant may be released on his/her own recognizance to appear at a later date [PC 1318.1 (a)(b)]</p> <p>At the felony arraignment, the preliminary hearing must be set within 10 court days [PC 859b] (Defendant in or out of custody)</p> <p>The defendant may enter a certified plea on a felony case [PC 859a]. The plea and waivers would be taken at the Preliminary jurisdiction level and “certified” to General Jurisdiction for sentencing</p> <p>If a defendant fails to appear in court as ordered, a bench warrant will be issued [PC 978.5]</p> <p>If a defendant has posted bail and fails to appear, the bail will be forfeited [PC 1305]</p>	<p>Misdemeanor committed</p> <p>If defendant remains in custody, arraignment must be within 48 hours, excluding Sundays and holidays [PC 825 (a)(1)]. A misdemeanor complaint is filed [PC 853.6]</p> <p>If the defendant is in custody at the time of arraignment, the jury trial must be set within 30 days [PC 686.1]</p> <p>The defendant may post bail to appear at a later date [PC 1269b]</p> <p>The defendant may be released on his/her own recognizance to appear at a later date [PC 853.6]</p> <p>If the defendant is out of custody at the time of arraignment, the jury trial must be set within 45 days [PC 686.1]</p> <p>If the defendant pleads guilty/nolo contendere, the defendant may be sentenced to probation or given a terminal sentence</p> <p>If a defendant fails to appear in court as ordered, a bench warrant will be issued [PC 978.5]</p> <p>If a defendant has posted bail and fails to appear, the bail will be forfeited [PC 1305]</p>

D. MINUTE ORDERS

1. Definition and Statute Requirements

- a. Minute order – a memorandum of what takes place in court, made by authority of the court. (Black’s Law Dictionary)
- b. Minutes are to be maintained by the clerk as part of the permanent record of the court. (GC69844)
- c. Minutes constitute the only official record of the actions of the court. (Meskell v. Culver City Unified School District (1970) 12 Cal. App.3rd 815, 821)
- d. The clerk of each Superior Court having jurisdiction of criminal actions or proceedings must maintain a minute order. In the docket must be entered the title of each criminal action or proceeding, and under each title all the orders and proceedings relating to it. (PC 1428)

2. Minute Order Form (CRC 201)

- a. Paper
 - 1) Recycled, white or unbleached (CRC 201(b))
 - 2) 8 ½ x 11 inches in size (CRC 201 (c))
- b. Print (CRC 201 (c))
 - 1) Not smaller than 12 point font
 - 2) Blue-black or black ink
 - 3) Equivalent to Courier, Times or Helvetica
- c. Pages (CRC 201 (c))
 - 1) Punched with two holes (2 ½ inches apart) in the center of the page, 5/8 inches from the top
 - 2) Numbered consecutively at the bottom. If minute orders are produced electronically, they may not be numbered at the bottom of the page.

3. Preparation

- a. Should be prepared within the time parameters established by statute and the court, and should:
 - Be Composed using correct grammar and composition, written English [CCP 185(A) acceptable abbreviations (CCP186)
 - Contain accurate spelling and punctuation.
 - Maintain a consistent format.
 - Reflect concise wording.
 - Be neatly typed or handwritten per court policy.

4. Components

- Heading
- Current date
- Court Name
- Department/Division Number
- Court staff members
 - a. Judge
 - b. Court Clerk
 - c. Counsel
 - d. Interpreter
 - e. Court Reporter
 - f. Bailiff

5. Case information

- Case number
- DA number (if assigned and dictated by court policy)
- True name of defendant
- Violations/Charges, if required
- Nature of proceedings (arraignment, jury trial, etc)
- Beginning and ending custody status

6. Body of Minute Order

- a. Appearances
- b. Summary of Events that Occurred
- c. Closing Events

7. The Particulars

a. Appearances

1. Appearances of Parties
 - Prosecuting party (PC 684)
 - Defendant (PC 685)
2. Name of counsel and agency
3. Defendant(s)
 - Appearing pro-per
 - Appearing with counsel
 - Appearing by counsel
4. Probation Officer
5. Interpreters, if used
 - Include name of interpreter(s) and whether they are certified or not (CRC 984.2)
 - Foreign language being translated [CCP 185(a)]
 - Name of person needing the interpreter (defendant, witness, etc)

b. Occurrences of Hearing:

1. Entry of Plea (PC1017)
2. Admission/Denial of Priors (PC 1025)
3. Motions
 - Moving Party
 - Ruling (sustained /overruled)
 - Grounds, if any
4. Advisement of Constitutional rights
5. Stipulations
6. Waivers
7. Orders

c. Closing:

1. Findings
2. Referrals (to whom, for what purpose)
3. Future hearing dates (date, time, dept./div.)
4. Custody status of defendant

E. CUSTODY STATUS

- 1. Definition of Custody:** The legal power used to physically detain or control an individual.

a. Custody Options:

- At Liberty
- Own Recognizance (O.R.)
- Bail / Bond (include amount and type)
- On Probation
- Outpatient (PC1600-1620)
- Deferred Entry of Judgment (Diversion)

Note: A defendant may be released on his / her own recognizance or bail / bond with specific conditions.

b. In Custody

1. Bail set at a certain amount
2. Without bail

c. Remanded:

1. The defendant is remanded to the care and custody of the Sheriff/Marshal or designated law enforcement officer in the following situations:
 - At the end of each hearing if in custody
 - At any hearing if the defendant is “at liberty” and one of the following things occur:
 - Bail increased
 - There has been a violation of one or more conditions of the O.R. release
 - Bail is exonerated

2. Release Orders

- (a) The Court may order the defendant released from custody and placed on an “at liberty” status at any stage of the proceedings.
- (b) If the defendant is acquitted or the case is dismissed, the Court shall order the defendant released.

F. BAIL

1. **Definition** - A security given by or for a person in custody to insure his/her appearance in court when so ordered.

- a. **Fixing The Amount** - PC 1269b(b) prescribes that bail will be fixed (set) on the following documents for use in the following instances:

- Schedule of bail [PC 1269 (c)]
- Court's order admitting to bail
- Warrant of Arrest
- Setting, reducing or denying bail (PC 1275)

- b. **Main factors considered by the Court:**

- Protection of the public
- Seriousness of offense charged
- Defendant's previous criminal history
- Flight risk of defendant
- Whether bail was feloniously obtained (PC 1275.1)

2. **Types of Bail**

- a. **Cash Bail (PC 1295)**

- Full amount of bail set is posted

- b. **Bail Bond/Undertaking (PC 1276)**

- A guarantee by a corporate surety that a person will appear in court.
- A promise to pay a sum of money if the appearance is not made.

- c. **Property Bond (PC 1298)**

1. Equity in real property given as security to guarantee that a person will appear in court.
2. The equity of property, less encumbrances, must be equal to twice the amount of bail.

3. Findings after verdict, felony matters (PC 1166)

- a. Upon the finding of guilt on a felony matter the defendant must be remanded unless findings are made on the record pursuant to this section.

4. Bail Exoneration [PC 1195]

- a. **Definition** - The removal of responsibility from the depositor to guarantee the defendant's appearance.

When Occurs:

- O.R. release granted (PC 1304)
- Good cause surrender by depositor (PC 1300)
- Defense motion granted
- Case dismissal/acquittal (PC 1303)
- Judgment is pronounced (PC 1195)

5. Bail Forfeiture (PC 1305)

- a. **Definition** - The loss of money or property due to breach of legal obligation.

When Occurs:

- The Court shall, **in open court**, declare bail forfeited when the defendant fails to appear in court when his presence has been lawfully required [PC 1305(a)].
- If the defendant fails to appear in court for a required appearance and the court finds good cause exists, the court is not required to forfeit bail (PC 1305.1)

6. Own Recognizance Release (PC 1270)

- a. **Definition** - A defendant is allowed to remain at liberty pending the outcome of a criminal action or proceeding. The release is based upon a written agreement and promise to appear that is signed by the defendant

1. Criteria for Release:

- Type of offense
- Criminal record
- Ties to the community
- Employment record

7. O.R. Revocation

- a. The Court may revoke a defendant's O.R. status during any stage of the proceedings. The Court may state the reasons on the record and issue a bench warrant.

Grounds for Revocation:

- Failure to appear
- Violation of O.R. release agreement
- Arrested on a new case
- Nature of the charges are changed

G. WARRANTS

1. Arrest Warrant

- a. **Definition** – An arrest warrant is a written order which is made on behalf of the state and is based upon a complaint issued pursuant to statute and/or court rule and which commands law enforcement officer to arrest a person and bring him before a magistrate. (*Black's Law Dictionary*)

b. **When issued (PC 813(a))**

- Complaint is filed charging a public offense.
- Magistrate is satisfied reasonable grounds exist to believe defendant may have committed the crime.

c. Form of Arrest Warrant (PC 814)

- Code provides basic language for the arrest warrant.
- Form may include defendant's identification information to facilitate service of warrant.

d. Contents (PC 815)

- Name of defendant, or if unknown, defendant may be designated by any name.
- Date of issuance,
- City/county where issued
- Signature of magistrate, judge, justice or other issuing authority with the title of his office, and
- The name of the court or issuing agency.

e. Amount of Bail (PC 815a)

- Magistrate must fix bail at time of issuance of warrant.
- Bail must be reasonable and sufficient for the appearance of the defendant after arrest.
- Warrant must contain a signed statement from the issuing magistrate stating the amount of bail. Statement may be in words to the effect of "The defendant is to be admitted to bail in the sum of _____ dollars"

f. Time of Service (PC 840)

- Arrest for a felony may be made at any time day or night.
- Arrest for misdemeanor or infraction cannot be made during hours of 10:00 p.m. to 6:00 a.m. unless:
- Arrest is made without a warrant per PC 836 or 837.
- Arrest is made in a public place.

- Arrest is made when person is in custody pursuant to another lawful arrest.
- Arrest is made pursuant to a warrant, which, for good cause shown, directs that it may be served at any time of the day or night.

2. Bench Warrant

a. Definition - Process issued by the court itself, or “from the bench”, for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey a subpoena. (*Black’s Law Dictionary*)

b. When Issued (PC 978.5(a))

- Defendant fails to appear as required by law;
- Ordered by the court to personally appear at specific date and time;
- Released on bail and ordered by the court or person authorized to accept bail or personally appear at specific date and time; Appear after having posted bail
- Released from custody on own recognizance and promises to personally appear at specific date and time;
- Released from custody by citation and signed a promise to appear at a specific date and time;
- Authorized to appear by counsel and ordered to appear at specific date and time;
- Appear for arraignment
- Defendant was discharged on bail and failed to appear (PC 979)

NOTE: The reason must be included in the bench warrant (PC 841)

3. Bail Setting (PC 815a)

- a. Standard bail schedule (PC 1269)
- b. Criteria considered in setting bail (PC 1275)
 - Protection of the public
 - Seriousness of the crime
 - Defendant's prior criminal history
 - Defendant's ties to the community
 - Funds not feloniously obtained
 - Alleged injury to the victim.
 - Alleged threats to the victim or witness.
 - Alleged use of firearms or other deadly weapon.
 - Alleged use or possession of controlled substances.

NOTE: Funds feloniously obtained will not be accepted as bail for the defendant. The District Attorney will place a hold on a defendant, pursuant to PC 1275.1, to preclude him/her from posting bail until a hearing is held to determine the origin of the bail funds.

4. Forthwith vs. Held

- a. Bench Warrant ordered issued forthwith. Clerk must note order in minutes and start procedure to issue warrant.
- b. If an outstanding warrant is ordered recalled by order of the Court, the order must be clearly documented on the minutes.
- c. Recall - To take back; cancel; annul; revoke
- d. When a Bench Warrant is ordered held to a specific date, the clerk must make note of the order in the minutes and take no further action on issuing the warrant.
- e. Warrant to issue,

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

If the defendant again fails to appear on the date calendared or fails to comply with the Court's order, the warrant held will be ordered to issue.

f. Order rescinded/withdrawn

If the defendant appears or complies with the Court's order, the order for the issuance of the warrant will be rescinded / withdrawn, (quashed).

Note: It is the clerk's responsibility to make sure that warrants are recorded accurately and recalled timely. According to case law, the clerk may be personally sued for a wrongful arrest on the clerk's failure to recall a warrant.

5. Attachment of Defaulters – Civil Bench Warrants

a. Definition: An order issued for the arrest of an individual, but not the defendant (a witness, attorney, custodian of records...)

1. Counsel requesting warrant should provide a description of the subject.
2. At the conclusion of the trial or hearing, the clerk should bring the outstanding attachment to the attention of the court to determine if it should remain active. It is not automatically recalled as the court may wish to take action against the person if and when they are located.

6. Summons

a. Definition; A summons in a criminal action is a writ, directed to the sheriff or other proper officer, requiring him to notify the person named that an action had been commenced against him in court whence the writ issues, and that he is required to appear on a day named, and answer the complaint in such action. (*Black's Law Dictionary*)

1. When issued (PC 814(a))

- Complaint is filed charging a public offense.

- Magistrate is satisfied reasonable grounds exist to believe defendant may have committed the crime.
- Prosecutor requests a summons be issued in lieu of an arrest warrant.

TAB II – CRIMINAL CASE PROCESS

H. DISPOSITIONS

1. Definition

- a. The sentencing or other final settlement of a criminal case.
(Black's Law Dictionary)

2. Terminal Sentence

- a. Imposition of a sentence that does not include probation or conditions of probation. When the defendant has met the requirements of the sentence, the court has no jurisdiction over the defendant. The case may constitute a prior if the defendant receives another case, but the defendant cannot be sentenced to additional fines or jail on the on the terminal sentence again.

Example: If the defendant is ordered to pay a fine, the defendant pays the fine, the case is closed.

3. Probation. [Penal Code 1203(a)]

- a. As used in this code, “probation” means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, “conditional sentence” means the suspension of the imposition or execution of sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infraction or misdemeanors.
- b. **Informal** also known as summary probation or a conditional sentence (unsupervised). Requires the defendant to comply with certain terms of the probation grant and orders of the court without the supervision of a probation officer. The court is to monitor the probation.
- c. **Formal** also known a supervised. A conditional release under the supervision of a probation officer. A probation officer monitors the defendant’s progress in complying with the terms and conditions of probation.

- 4. Imposition of Sentence Suspended (“ISS”) –** A disposition in which imposition of the maximum penalty is suspended and the defendant is ordered to comply with terms of probation.
 - a. The maximum sentence is not imposed
 - b. Defendant may be placed on Supervised Probation (Formal) or Conditional Sentence (Informal).
 - c. Defendant must agree to the terms and conditions of probation.
 - d. A violation of probation may result in probation being revoked and reinstated with new terms or conditions of probation, revoked and terminated, or revoked and the maximum sentence being imposed.

- 5. Execution of Sentence Suspended**
 - a. Defendant is sentenced to serve a certain amount of time in jail.
 - b. Execution of the jail sentence is suspended and the defendant is placed on probation and ordered to comply with certain terms and conditions which may include some jail time.
 - c. A violation of probation will most likely result in probation being revoked and the previously suspended sentence imposed, (which is the maximum sentence that can be imposed whether or not it is the maximum sentence pursuant to the code).

- 6. Purpose of Probation**
 - a. Accepting a guilty plea and imposing probation in lieu of maximum jail time. All courts have the power to grant probation on misdemeanor and infraction cases pursuant to PC 1203.

- 7. Terms and Conditions**
 - a. Any order of the sentence that the defendant needs to comply with.
Example: pay a fine; violate no laws.
 - b. Plea to the Court
 - c. The defendant may enter a plea to the court at any stage of the proceedings as long as the Court is willing to accept it. The prosecuting attorney is not involved in the sentence.

8. Negotiated Plea

- a. The effect of plea bargaining in which the defendant agrees to plead guilty to the charge or to a reduced charge in return for a recommendation from the prosecutor or a disposition less severe than possible under the particular statute. (Black's Law Dictionary)

9. Written Waiver of Rights

- a. A form the defendant is required to complete advising of his / her right and sentence. Defendant is to initial and sign therefore acknowledging and waiving each of the rights therein. (Boykin, Tahl or Mendella)

10. Consequences to Guilty Plea

- a. Penalties: The possible legal effects and maximum penalties for subsequent convictions for the same or similar offenses and the possible consequences for violation of probation or parole.
- b. Aliens: If defendant is not a citizen, a conviction of the offense may lead to deportation, exclusion from admission, or denial of naturalization (misdemeanor violations).
- c. DMV: The possible or mandatory effects upon his / her driving privileges for the violation or future violations.
- d. Nolo Contendere Plea: Has the same legal effect as a guilty plea per PC 1016 but cannot be used against the defendant in a civil action.

I. DRIVING UNDER THE INFLUENCE

1. 1st Offense - VC 23152 (a) and (b) / Mandatory Minimum Probationary Sentence

- a. 3 years informal probation
- b. Pay a fine of \$390.00 plus Penalty Assessment
- c. Pay \$50.00 Alcohol Abuse and Education and Prevention Penalty Fee.
- d. Pay \$37.00 Alcohol Testing Fee
- e. Pay \$100.00 State Restitution Fine
- f. Attend and complete 1st Offender Alcohol Program – Level 1 or Level II
 - Level I -3 Month
 - Level II - 6 Month.....BAC .20% or more by weight
- g. 90 day California drivers license restriction or 48 hours in jail if no valid license and a six-month license suspension.

1st Offense - VC 23152 (a) and (b) / Mandatory Minimum Non Probation Sentence

- a. 96 hours in jail
- b. Pay a fine of \$390.00 plus Penalty Assessment
- c. Pay \$50.00 Alcohol Abuse and Education and Prevention Penalty Fee.
- d. Pay \$37.00 Alcohol Testing Fee
- e. Pay \$100.00 State Restitution Fine
- f. Six month license suspension.

2. 1st Offense - DUI Enhancements

a. Defendant – Age 18 - 21

- Order an additional one-year suspension or delay in issuance of the license. Exception based on critical need to drive. [VC 13202.5]
- Defendant may petition the court for a license restriction in lieu of suspension, to drive to school, etc. If the court grants the request, the court will need to make a finding of good cause.

b. Minor Passenger(s) - Under 14 years

- Serve an additional 48-hour jail unless also convicted of PC 273a. [VC 23582]

c. Excessive Speed

- Serve an additional (consecutive) 60 days jail if speed exceeds the posted speed limit by 30 or more miles per hour on the freeway or 20 or more miles per hour on any other road. Treatment program is required if probation is NOT granted. [VC 23582]

d. Refusal

- The court must consider as a special factor that may justify enhancing penalties in sentencing and in determining whether to grant probation. [VC 23578]

- 3. 2nd Offense within 10 years VC 23152(a) and (b) – Mandatory Minimum Probationary Sentence**
- a. 3 years informal probation
 - b. Pay a fine of \$390.00 plus Penalty Assessment
 - c. Pay \$50.00 Alcohol Abuse and Education and Prevention Penalty Fee.
 - d. Pay \$37.00 Alcohol Testing Fee
 - e. Pay \$100.00 State Restitution Fine
 - f. Attend and complete 2nd Offender Alcohol Program –
18 month or
30 month
 - g. 18 month California drivers license restriction or 10 days in jail if no valid license and a two-year license suspension.

2nd Offense - VC 23152 (a) and (b) / Mandatory Minimum Non Probation Sentence

- a. 90 days in jail
 - b. Pay a fine of \$390.00 plus Penalty Assessment
-
- 1) Pay \$50.00 Alcohol Abuse and Education and Prevention Penalty Fee.
 - 2) Pay \$37.00 Alcohol Testing Fee
 - 3) Pay \$100.00 State Restitution Fine
 - 4) Two year license suspension.

4. 2nd Offense - DUI Enhancements

a. Defendant Age 18 – 21 years

1. Order an additional one (1) year license suspension or delay in issuance license. Exception based on critical need to drive. [VC 13202.5]
2. For each successive offense, the court shall suspend the person's driving privilege for one (1) additional year.
3. Defendant may petition the court for a license restriction in lieu of suspension, to drive to school, etc. If the Court grants the request, the Court will need to make a finding of good cause.

b. Minor passengers under 14 years of age

Serve an additional ten (10) days unless the defendant is also convicted of VC 273a (terminal or probationary). [VC 23572(a)(2)(c)]

c. Excessive Speed

Serve an additional (consecutive) 60 days jail if speed exceeds the posted speed limit by 30 or more miles per hour on the freeway or 20 or more miles per hour on any other road. Treatment program may be required. [VC 23582]

d. Refusal

Serve additional ninety-six (96) hours jail (terminal or probationary). [VC 23577]

The Court must consider as a special factor that may justify enhancing penalties in sentencing and in determining additional or enhanced terms and conditions of probation. [VC 23578]

5. 3rd Offense - VC 23152(a) and (b) – Mandatory Minimum Probationary Sentence

- a. 3 Years Informal Probation
- b. 120 days in jail
- c. Pay a fine of \$390.00 plus Penalty Assessment
- d. Pay \$50.00 Alcohol Prevention Penalty Fee
- e. Pay \$37.00 Testing Fee
- f. Pay \$10.00 Cite and Release Fee
- g. Pay \$100.00 State Restitution Fund Fine
- h. Pay Alcohol and Drug Assessment Fee of not more than \$200
- i. Attend and complete 18 month (Multiple Offender) Alcohol Program
- j. Driver's license revoked for 3 years
- k. Defendant to be designated a **Habitual Offender** pursuant to VC 13350(b).
- l. Impound the vehicle for up to ninety (90) days if offense is within five (5) years of two (2) or more prior DUI convictions, unless "interest of justice" exception applies pursuant to VC 23594.

3rd Offense - VC 23152 (a) and (b) / Mandatory Minimum Non Probation Sentence

- a. 120 days in jail
- b. Pay a fine of \$390.00 plus Penalty Assessment
- c. Three year license revocation

6. 3rd Offense - DUI Enhancements

a. Age 18 – 21 Years

1. Order and additional one (1) year license suspension or delay in issuance of license. Exception based on critical need to drive. [VC 13202.5]
2. For each successive offense, the court shall suspend the person's driving privilege for one (1) year.
3. Defendant may petition the court for a license restriction in lieu of suspension, to drive to school, etc. Court will need to make a finding of good cause.

b. Minor Passengers Under 14 Years

Serve an additional 30 days jail unless defendant is also convicted of PC 273a (terminal or probationary)

c. Excessive Speed

Serve an additional (consecutive 60 days jail if speed exceeds the posted speed limit by 30 or more miles per hour on the freeway or 20 or more miles per hour on any other road. Treatment program may be required. [23582]

d. Refusal

1. Serve an additional ten (10) days jail (terminal or probationary). [VC 23577]
2. The court shall consider as a special factor that may justify enhancing penalties in sentencing and in determining additional or enhanced terms and conditions of probation. [VC 23578]

TAB III – CRIMINAL HEARINGS

J. PRETRIAL HEARINGS

1. Pretrial Motions - benefits

- a. If granted, a motion can dispose of the case entirely. No need for trial.
- b. Rulings may cause a change of plea by the defendant. No need for trial.
- c. Issues are clarified and points of common ground are found. Trial will take less time.
- d. Discovery Compliance.

2. Time for filing – Set by Local Rules

- a. All formal pretrial motions and points and authorities shall be served and filed at least ten (10) calendar days prior to the hearing date. [CRC 4.111]
- b. Any opposing papers must be filed at least five (5) calendar days prior to the hearing date.
- c. Any reply papers shall be filed at least two (2) court days prior to the hearing date.
- d. Proof of service of the moving papers shall be filed no later than five (5) calendar days prior to the hearing date.
- e. Exceptions:
 - Motion to continue a criminal hearing requires notice 2 court days in advance. (PC1050)
 - Motion for Discovery (Pitchess Motion) requires 21 days notice pursuant to CCP 1005.
 - Motion to Suppress Evidence (PC 1538.5) requires service on the district attorney 10 judicial days prior to the hearing.
 - Counsel requesting to file motions less than 10 days notice must obtain an Order Shortening Time signed by the judge.

3. Motion Hearings

- a. Once made, a motion is disposed of at a hearing at **which the moving party has the burden of proof.**
 - At the pretrial hearing the motion may be:
 1. Heard De Novo (anew) by the Court (counsel will present oral arguments).
 2. Submitted on the written documents already filed.

4. Minute Order Contents

- a. Nature of the proceedings
- b. Parties present (include first and last name)
- c. Testimony given
- d. Exhibits introduced / received into evidence
- e. Rulings of the Court
 - May be granted or denied
 - May be ruled on its **entirety or in part**
 - May be taken under submission and ruled on at a later time
- f. Disposition of the case
 - Charges dismissed; defendant discharged as to the case (don't forget to vacate any future hearing / trial dates or exonerate bail.)
 - Pretrial or trial date to remain

TIP: It is a good idea for the courtroom clerk to make a copy of the face page of all written motions (if given the opportunity) to have the content clear for the minutes and to help focus on the Court's thinking.

5. Common Pretrial Motions

- a. PC 1538.5 Motion: A defense motion for return of property or suppression of evidence.
- b. PC 954 Motion: A motion to consolidate (to bring together) two or more different cases or offenses.
- c. PC 1054.5 Discovery Motion: A motion to have the Court order the production of information, documents, or evidence that has not yet been provided to the opposing side, such as laboratory test results or a list of possible witnesses. Request must be made informally before the filing of a formal motion.
- d. Change of Venue Motion (PC 1033): A motion to move the trial to another venue (county) based on pretrial publicity.
- e. Motion to Sever: A motion to separate / bifurcate. The moving party requests that counts, cases, priors, and/or co-defendants be heard separately.
- f. PC 1050 Motion: A motion to continue any hearing in a criminal proceeding, including the trial. A written notice shall be filed and served on all parties to the proceeding at least two (2) court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary. [PC 1050(b)(1)] Continuances shall be granted only upon a showing of good cause. At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good case, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes. [PC 1050(e) and (f)].
- g. CCP 170.6 Motion to Disqualify: Peremptory challenge of a judge, court commissioner, or referee by either the prosecutor or defense.

6. Common Motions

- a. **Marsden Motion Hearing** - Request by defendant to have court appointed counsel relieved.
 - 1. Closed Hearing, (outside the presence of the prosecutor).
 - 2. Minutes only reflect the granting or denial of the motion, not the content.
 - 3. Court reporter's notes are sealed after hearing (if court reporter present).

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

b. PC 1368 Hearing - Court or defense attorney's inquiry into the mental competence of the defendant. Defendant unable to:

1. Understand the nature of the proceedings.
2. Assist counsel in a rational manner.

➤ **An examination and subsequent hearing to determine mental competency are requested.**

➤ **After Mental Competency Hearing:**

3. Defendant is found to be competent. Criminal proceedings are reinstated. Defendant returns to stage of the case where criminal proceedings were suspended.
4. Defendant is found to be incompetent. Criminal proceedings remain suspended. Defendant is committed for treatment.

K. PRETRIAL MOTIONS BY “CASE LAW” NAMES

Some cases become such landmarks in law that their names are used as a shorthand reference for the central right or concept embodied in the ruling. For example, we all know that the reference to Miranda means that the defendant must be advised of certain rights at the time of arrest and before questioning. (Miranda v. Arizona 384 U.S. 436). The following motions are listed in alphabetical order by the “case law” names.

Aranda Motion People v. Aranda (1965) 63 Cal.2d 518

This motion concerns one defendant making an admission or confession and implicating a co-defendant. The motion will be brought by the co-defendant trying to minimize the damage of the statement. The Court may:

1. Sever the two defendants and have separate trials or have one trial with two separate jury panels impaneled.
2. Permit a joint trial deleting the reference to the objecting co-defendant.
3. Not allow the statement to be used at all in the joint trial.

Buker Motion Buker v. Superior Court (1972) 25 Cal.App.3d 1085

This is a defense motion for the return of money seized from the defendant at time of arrest or during execution of a search warrant.

Eleazer Motion Eleazer v. Superior Court (1970) 1 Cal.3d 847

This is a motion to require the prosecution to inform the defense of the whereabouts of a confidential informant (C.I.). The court held that the prosecution must make a good faith effort to keep in touch with or locate the C.I. so that he/she could be served with a subpoena to come to court.

Evans Motion Evans v. Superior Court (1974) 11 Cal.3d 617

This is a defense motion to compel a corporeal (body) lineup prior to trial. Since the People have easy access to compelling a lineup, the court determined that the defense should have the same opportunity.

Faretta Motion Faretta v. California (1975) 422 U.S. 806

This is a motion by the defendant in which he/she voluntarily and intelligently elects to represent himself/herself. Defendant may complete a questionnaire for defendants wishing to represent themselves if required by the court. This would be filed with the Court and duly noted in the minutes.

Hitch Motion People v. Hitch (1974) 12 Cal.3d 641 or:

Trombetta Motion People v. Trombetta (1985) 173 Cal.App.3d 1093

This is a defense motion to suppress testimony based on evidence (such as a breath sample, sperm sample, officer's notes, etc.) that was lost or destroyed.

Kelly/Frye Motion People vs. Kelly 17 Cal.3d 24; Frye v. United States 293 F 1013

Motion or hearing to determine whether a scientific discovery or principle has gained general acceptance in its field. (DNA Testing)

Kraft Motion People v. Kraft (1970) 3 Cal.App.3d 890 or:

Rochin Motion Rochin v. California (1952) 342 U.S. 165

This is a motion to suppress because of an alleged use of unnecessary force by police officers, such as using a "choke hold" to get heroin out of the mouth or arm twisting to get a blood sample.

Marsden Motion People v. Marsden (1970) 2 Cal.3d 118 (not necessarily a pretrial motion)

Request by defendant to have court appointed counsel relieved. This Motion may be made at any stage of the proceedings. Defendant must give reasons as to how and why the attorney's representation is inadequate.

Murgia Motion Murgia v. Municipal Court (1975) 15 Cal.3d 286

This is a defense motion for the production of documents that would point to intentional discriminatory enforcement of penal laws. The defendant alleges that he/she is singled out as an individually selected class for special prosecutorial treatment. With such records, for example, the defense may statistically establish that prostitution statutes are enforced against women who engage in prostitution but not against their male clients.

Assuming that the discovery establishes that the prosecution is discriminatory, the defendant would proceed with a second motion to have the charges dismissed. If the Court grants this motion, the effect is to dismiss the case and discharge the defendant, based upon the ruling in Murgia, supra: "If an individual can show that he would not have been prosecuted except for such invidious discrimination against him, a basic constitutional principle has been violated, and such prosecution must collapse on the sands of prejudice."

Pitchess Motion Pitchess v. Superior Court (1974) 11 Cal.3d 531

This is a defense motion to discover anything in the personnel file of an enforcement officer that discloses a propensity for violence, prior use of excessive force, ethnic or racial bias, or habitual lack of credibility on his part. It is most often brought by a defendant who is charged with resisting arrest or assaulting a police officer and who intends to rely on the theory of self-defense or excessive use of force during trial.

Since police personnel records are confidential under PC 832.8, the Court will examine the records in camera. At the hearing, the Court will either find the records (or parts of them) relevant and grant the motion for discovery (thereby ordering the production of records to the defense) or will find the records irrelevant to the pending case and will deny the motion. As personnel records are highly confidential, the clerk must take great care to protect them and see that they are handled as the Court directs.

Rost (or Speedy Trial) Motion Rost v. Municipal Court (1960) 184 Cal.App.2d 507

This is a motion to dismiss for lack of a speedy trial because the Court failed to meet the statutory deadlines set in PC 1381, 1381.5, and 1382. These sections refer to when the defendant is already incarcerated on another case or when deadlines are not met on initial trial.

Serna Motion Serna v. Superior Court (1985) 40 Cal.3d 239

Defense motion to dismiss based upon unexcused failure of police to serve a misdemeanor arrest warrant within one year of filing of the complaint. Establishes presumption that defendant's right to a speedy trial has been violated.

Twiggs Motion Twiggs v. Superior Court (1983) 34 Cal.3d 360

The basis of this motion is that the district attorney is engaged in a "vindictive" prosecution. The ruling on this case arose because, after a mistrial, the district attorney offered a plea bargain, which was refused by the defendant. In return, the district attorney filed several additional charges against the defendant to add to the retrial.

This case also held that when a confidential informant is a material witness on the issue of guilt, the People must disclose his whereabouts to the defense or incur a dismissal. (See Eleazer)

Wade/Gilbert Motion United States v. Wade (1967) 388 U.S. 218; Gilbert v. State of California (1967) 388 U.S. 263

This is a motion in which the defense seeks to suppress testimony regarding a pretrial identification lineup conducted by the police on the grounds that the lineup procedure was unfairly suggestive.

L. LIST OF COMMON PRETRIAL MOTIONS BY CATEGORY

1. Motions to Suppress:

- a. Suppress evidence because of illegal search and seizure (**PC1538.5**)
 - 1) Suppress evidence because of evidence lost or destroyed by the prosecution (Hitch motion)
 - 2) Quash subpoena

2. Motions for Discovery:

- b. General discovery motion
- c. Discover information concerning police officer's past misconduct (Pitchess Motion)
- d. Discover informant's identity (EC 1042)
- e. Discover evidence to support defense of discriminatory enforcement (Murgia motion)
- f. Appointment of experts (EC 730-733)
- g. Acquire transcript of prior trial or hearing

3. Motions to Dismiss:

- a. Demurrer
- b. Dismiss in the interest of justice [PC 1385]
- c. Suppress evidence pursuant to PC 1538.5, (can result in a dismissal)
- d. Dismiss based on discriminatory enforcement (Murgia motion)
- e. Dismiss based on retaliatory prosecution (Twiggs motion)
- f. Dismiss based on denial of speedy trial (Serna motion or Rost motion) [PC 1381]
- g. Dismiss based on prosecution's failure to maintain contact with witness (Eleazer motion)

4. Protective Motions:

- a. Change of Venue [PC 1033]
- b. Severance/Joinder
- c. Closed courtroom
- d. Continuance [PC 1050]

5. Miscellaneous Motions:

- a. For interpreter
- h. Bail/OR Release
- i. Hold opposing or co-counsel in contempt
- j. Be relieved as counsel
- k. Amend complaint
- l. Recuse prosecutor
- m. Challenge judge (CCP 170.6) (CCP 170.1)
- n. To have court appointed counsel relieved (Marsden motion)
- o. For court reporter
- p. To determine mental competency (PC 1368)

M. PRETRIAL CONFERENCES

1. Benefits

- a. Conferences can dispose of the case entirely. No need for trial.
- b. Rulings may cause the defendant to change his/her plea. No need for trial.
- c. Issues are clarified and points of common ground are found. Trial will take less time.

2. Steps in Negotiations;

- a. Court and counsel confer, off the record.
- b. Both sides present their perspective of and position on the case.
- c. Defense counsel initiates negotiations. Prosecutor may agree or make counter offer.
- d. Court can guide conference and makes recommendations to keep negotiations from reaching an impasse.
- e. Defendant makes decision whether to accept or refuse negotiated plea.

3. Outcome

- a. Case is non-negotiable and the case is continued or trial date/preliminary hearing date is set / confirmed. If the case is continued or set beyond the statutory time for trial, the defendant must enter a time waiver.

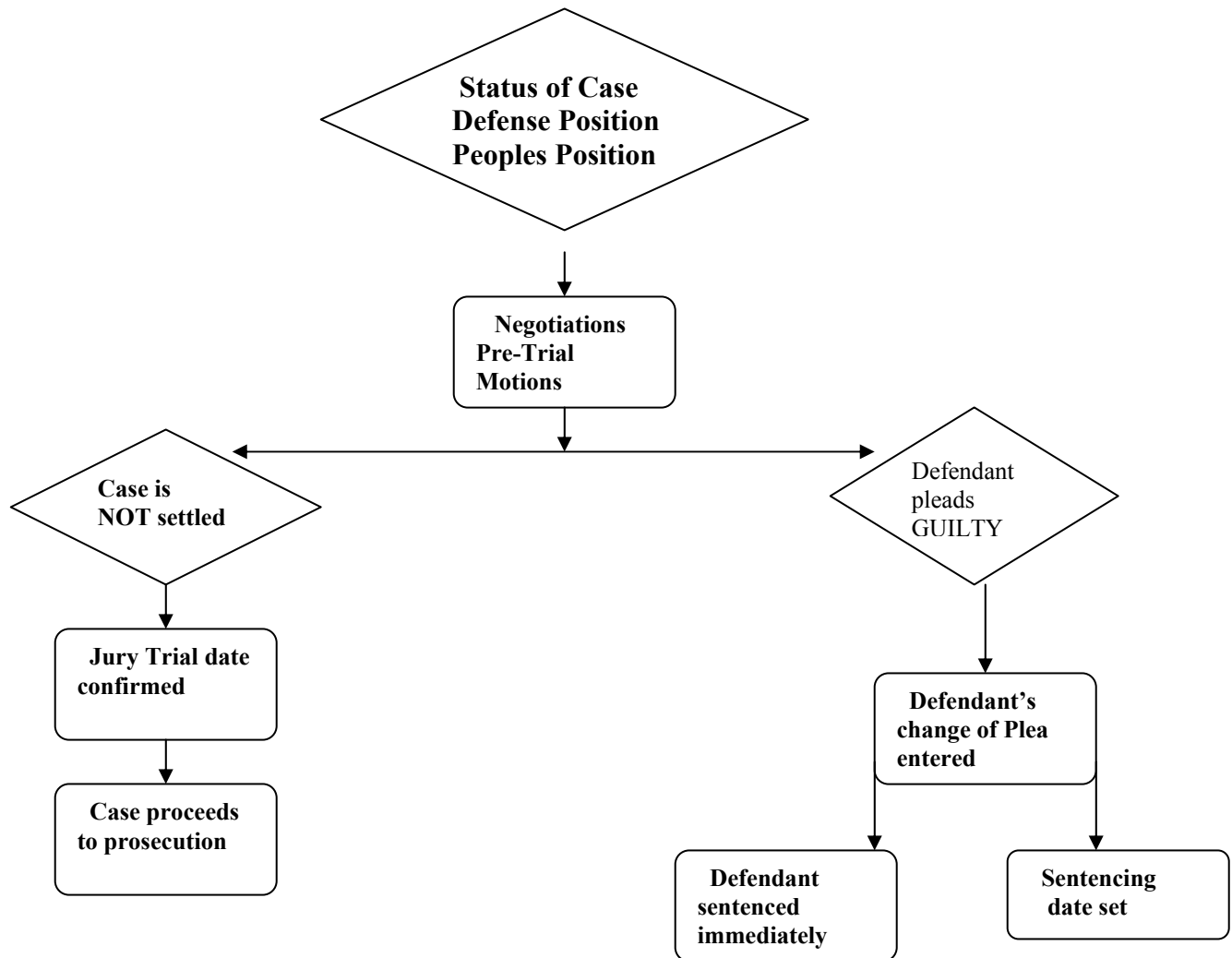
(1) **General Time Waiver** – The defendant enters a general time waiver of the 30/45 day requirement which entitles the court to continue a trial date without the dismissal sanction, should the case fail to proceed on the date set. This time waiver remains in effect until the defendant withdraws the waiver. [PC 1382(3)(A)]

Note: If a general time waiver is not expressly entered, then PC 1382(3)(B) applies.

- (2) Statutory time waiver [PC 1382(3)(B)] – The defendant waives time to the date set for trial. The trial must proceed on that day or within 10 days thereafter.
- b. An agreement is reached and defendant changes his/her plea.

- c. All pleas of guilty/nolo contendere on felony cases are made in open court on the record by the defendant appearing with counsel.
- d. All infraction and misdemeanor pleas of guilty/nolo contendere are made in open court (on the record if a court reporter is present) by the defendant appearing either pro per, or with or by his/her attorney.

4. Readiness Conference Review - Flowchart



N. CHANGE OF PLEA EVENTS - Guilty/Nolo Contendere Plea

1. A Plea of guilty/nolo contendere is valid only if it is voluntarily and intelligently made.
2. Prior to accepting a plea of guilty, the Court must inquire of the defendant:
 - a. Defendant's true name
 - b. Any influence of alcohol /drugs
 - c. If the defendants has any questions.
 - d. That the defendant has an understanding of relinquished rights. The record must show explicit waivers of these conditional rights:
 - (1) Privilege against self-incrimination
 - (2) To trial by jury
 - (3) Testify and present evidence on his/her behalf
 - (4) Confront witnesses against him/her
 - e. Understand the nature of the charges against him/her and understands.
 - f. Understands the possible defenses to the offenses charged and the possible penalties.

3. Waivers

- a. Plea and waivers may be in writing, signed by the defendant, defense counsel (if any), and the prosecutor/people (unless plea to the court).
- b. Minute entry should be clear as to if the waivers are verbal or in writing.

4. Acceptance of Plea

- a. Court recites plea bargain
- b. Court explains the court may consider any dismissed counts when sentencing and in ordering restitution (Harvey Waiver).

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

- c. Court reads count(s) to which the defendant will plead.
- d. Defendant MUST orally enter the same plea. Counsel will state satisfaction with the plea.
- e. Court finds factual basis for the plea.
- f. Defendant must be advised that he/she has the right to be sentenced by the judge taking the plea and if that will not be the case he/she must waive that right. (Arbuckle Waiver).
- g. Plea is accepted by the Court. Prosecutor will move to dismiss any remaining counts and allegations.

NOTE: The Court has the right to grant or deny probation on all misdemeanor cases.

- h. The Court may refer the matter to the probation officer for a probation and sentencing report. A date for sentencing must be set.
- i. The defendant may have agreed upon a recommended sentence when entering his/her plea.
- j. The Court may place the defendant on probation and:
 - (1) Suspend the imposition of sentence
 - (2) Impose sentence and suspend the execution thereof
- k. Depending upon the nature of the charges and the record of the defendant, the terms of probation may include but are not limited to:
 - (1) Fine
 - (2) Jail
 - (3) Community Service
 - (4) Paying Restitution to Victims
 - (5) Search and Seizure
 - (6) No Contact order with victim
 - (7) Counseling
 - (8) Violate no law
 - (9) And other conditions as ordered by the court

- l. If the grant of probation is Formal, the probation department will supervise the defendant.
 - m. If the grant of probation is Informal / Conditional Sentence / Summary Probation, the defendant will not report to a probation officer.
 - n. The Court may not place the defendant on probation but may give the defendant a terminal sentence, i.e.;
 - (1) Fine
 - (2) Jail
 - (3) Suspend sentence
 - o. Custody Time
 - (1) Consecutive **sentences (example)**

MC12345 – 30 days jail
MC67890 – 30 days jail

Defendant will serve 60 days
 - (2) Concurrent **sentences (example)**

MC12345 – 30 days jail
MC67890 – 30 days jail

Defendant will serve 30 days
- Note: On concurrent sentences, any credit time served will apply to each case.**
- p. Credit for time served

TAB IV - TRIALS

O. TRIAL MINUTES

Jury Trial Definition: A trial in which factual issues are determined by a jury not by the judge.

1. Sequence and/or Time - Minutes

a. Minute entries must be made and time can be noted when:

- Court convenes each day
- For all recesses
- To record information regarding the jury such as:
 - (1) When jury enters court, if after convening
 - (2) Commencement of jury deliberations
- During daily jury deliberations
 - (1) Time reporting each day
 - (2) Recesses
 - (3) Time adjourning each day
 - (4) Returning with a verdict
- Adjournment at end of day

b. Additional time notations can be made:

- (1) When jury panel is sworn:
- (2) As to qualifications
- (3) To try the case
- (4) When bailiff is sworn to take charge of the jury

(Noting of the actual times in your minutes may or may not be required in your court)

2. Minute Heading Information

- a. Heading information may contain:
1. Current date
 2. Court name
 3. Department/Division number
 4. Names of court staff members
 5. Case number
 6. Case title
 7. Hearing type (jury trial, court trial, etc.)
 8. Attorneys appearing for each party
 9. Defendant
 - appearing pro per
 - appearing with counsel
 - appearing by counsel
 10. If an interpreter is present, include his/her name and the language being interpreted
 11. If a court reporter is present, it should be noted in the minutes.
 12. If the proceedings are to be recorded electronically, it should be noted in the minutes.

3. Body of Minutes

- a. Must reflect all occurrences of the hearing such as:
 - (1) Names of all witnesses, and on whose behalf called
 - (2) Exhibits
Information:
 - Number/letter
 - Offering party
 - Description: (examples:)
 - “A photograph of a blue Toyota truck”
 - “A copy of a letter dated June 14, 1996”
 - Status
 - Identification (marked for Identification)
 - Received (received into Evidence)
 - (3) Stipulations (examples:)
 - “Parties stipulate that the defendant drives a blue Toyota truck”
 - “Parties stipulate that on June 14, 1996 rain fell between 4:00 P.M. and 6:00 P.M.”
 - (4) Waivers (example)
 - “The defendant waives his/her right to be present during the testimony of Jane Doe
 - (5) Motions (example)
 - “The defense motion to have the witness instructed to call the defendant “Mr. Brown” and not the defendant.”
 - (6) Court orders, ruling, findings
 - “The court orders the witness, James Jones, to return on (date)”.
 - The Court grants the defendant’s motion”
 - (7) Future hearing date(s), time(s), place(s)

4. Minute Closings

- a. Adjournment of the day's proceedings
- b. Date, time, and Division/Department at which trial will resume
- c. Status of Defendant
 - In Custody
 - At Liberty

P. TRIALS

1. Types of Trials

- a. Jury Trial (Misdemeanors)
- b. Court Trial (Misdemeanors and Infractions)
- c. Trial by declaration

2. Jury Trial sequence

- a. In Limine Motions (jury trials only)
- b. Jury Selection (jury trials only)

Wheeler Motion - People v. Wheeler (1978) [22 Cal.3d 258]
Motion by either party, during jury selection, alleging that the prospective jurors belonging to an identifiable ethnic or economic group were systematically excused. The Supreme Court held the use of peremptory challenges to remove prospective jurors on the sole ground of group bias, violates the right to trial by a jury drawn from a representative cross-section of the community.

- c. Accusatory pleading read to jury (PC 1093(a))
Jury pre-instructed. (PC 1122) (CAL JIC .050)

- d. Opening Statements (PC 1093(b))
 - (1) Prosecutor/People
 - (2) Defendant (gives, reserves or waives)
- e. Evidence phase (testimony, exhibits, and stipulations in lieu of testimony or exhibits. (PC 1093 (c)), PC 1093(d))
 - (1) Prosecutor/People's case-in-chief
 - (2) Defendant's case-in-chief
 - (3) Prosecutor/People's rebuttal
 - (4) Defendant's rebuttal
- f. Closing Arguments (1093(e))
 - (1) Prosecutor/People
 - (2) Defendant
 - (3) Prosecutor/People's Rebuttal

3. Jury Trial process

- a. Instructions read to jury (PC 1093(f)
(May be read prior to argument).
- b. Jury deliberates
- c. Jury renders a verdict or if unable to reach a verdict, the Court declares a mistrial. If a mistrial is declared, the case will be re-set for trial.
- d. The jury is thanked, released from admonishment, and excused from further participation in this case, and court is adjourned.

4. Court Trial process

- a. Court reviews the evidence and renders a decision
- b. Court takes case under submission and renders a decision at a later date.

5. Preparation for Trial

- a. Check custody status of the defendant(s). Inform the bailiff of the case assignment, the number of defendants, and the custody status.
- b. Check if the defendant requires an interpreter. Check if any witnesses require an interpreter. If interpreter is required, make the necessary arrangements.
- c. Verify the name of the defendant and the charges listed on the docket against the complaint.
- d. Check the names of counsel. If possible, get business cards or obtain phone numbers, fax numbers, pager numbers and addresses.
- e. Make a copy of the complaint for you and the court reporter (if one is present).
- f. Check the file for any previously filed motions in limine and ask counsel if there are any new in limine motions. Copy the front page of each motion for your reference.
- g. Inform the judge that a case has been assigned for trial. Give the judge the case file and the in limine motions. Ask the judge how he/she wishes to proceed.
- h. Make yourself a “trial folder” to keep miscellaneous trial related material in. Keep this folder handy throughout the trial.
- i. While Court and Counsel confer in chambers:
 - (1) Prepare jury seating charts
 - (2) Prepare an envelope in which to seal jury information (may be placed in your “trial folder.”)

j. After Court and Counsel have conferred:

(1) When the judge informs you that a jury panel is needed, call the Jury Commissioners' Office/Jury Services Clerk.

(2) Obtain the witness lists from counsel. Makes copies for judge, clerk, reporter, and bailiff, (ideally the attorneys should have done this). Witness lists may or may not be required in your court.

6. Motions in Limine

Definition: Motions to be heard prior to the start of the trial.

Purpose: To determine what evidence will be presented to the jury. (Most commonly, to exclude evidence from the jury).

a. Common In Limine Motions

(1) Evidence Code 402 Motions

- The existence or non-existence of a preliminary fact, if disputed, must be determined.

(2) Motion to Preclude (or Include) Testimony/Exhibit (EC 403)

- To block evidence from the case, such as some particularly gruesome photographs or an expert's opinion.

(3) Motion for Severance

- To sever trial from a co-defendant.

(4) Motion to Bifurcate Priors

- To have a separate trial on alleged priors (commonly used in a driving under the influence trial with a prior conviction alleged).

(5) Motion to Exclude Witnesses (PC 867)

- To keep witnesses out of the courtroom prior to their testimony being given.

7. Jury Selection [CCP 206 and CCP 237]

- a. All Juror information is confidential in a criminal trial. This includes names, addresses, and phone numbers. This can be handled in a variety of ways depending upon each court's policy and procedure, the most common methods follow. [CCP 237(a)(1)]

Method 1

- Juror names are never written in the minutes.
- The jurors are referred to by their seat numbers only.
- Because the jurors' names are used in open court during jury selection, the court reporter's notes will be ordered sealed at its conclusion.
- Seating charts used by counsel during voir dire may be collected and destroyed at its conclusion.
- A jury list showing the seated panel and alternates is prepared to preserve the record in the event of an appeal or a petition for the information. (CCP 237) The jury list will be sealed at the conclusion of the trial.
- All court documents containing the names of jurors (verdicts, jury notes, etc.) will be sealed at the conclusion of the trial. (CCP 237(2))

OR**Method 2**

- a. There is no change in trial procedure. Jurors' names are treated in the normal manner during trial. They are written in the minutes and on related documents. At the end of the trial the clerk will proceed as follows:
- Edit the names from all minutes and court documents.
 - Place redacted copies of the minutes and documents in the case file.
 - Seal original minutes and court documents that mentioned jurors' names at the conclusion of the trial.

Note: If minutes are entered on an automated system, the procedure described in Method 2 will be difficult, if not impossible to achieve.

8. Jury Preparation

- a. Distribute seating charts and voir dire information to counsel
- b. Upon arrival of prospective jurors
 - Welcome them to the courtroom
 - Take roll call of prospective jurors. (some courts may count the number of jurors and compare it to the total of jurors scheduled)
 - Administer the “Oath to Prospective Jurors” which shall be acknowledged by the prospective jurors with the statement, “I do”.

Note: Some courts may administer the oath before the judge takes the bench, others after the judge takes the bench.

OATH TO PROSPECTIVE JURORS – [CCP 232(a)]

DO YOU AND EACH OF YOU, UNDERSTAND AND AGREE THAT YOU WILL ACCURATELY AND TRUTHFULLY ANSWER, UNDER PENALTY OF PURJURY, ALL QUESTIONS PROPOUNDED TO YOU CONCERNING YOUR QUALIFICATIONS AND COMPETENCY TO SERVE AS A TRIAL JUROR IN THE MATTER PENDING BEFORE THIS COURT; AND THAT FAILURE TO DO SO MAY SUBJECT YOU TO CRIMINAL PROSECUTION?

9. Introductory Procedure

- Court introduces self, staff, counsel, and defendant.
- Complaint may be read or a statement of the nature of the case may be presented by the Court.
- Names of potential witnesses are read or posted.

10. Jury Selection – Jurors names shall be called in random order for voir dire, until the jury is selected or the panel is exhausted. [CCP 222]

- a. The judges vary in their method of jury selection. Some:
 - Examine 12 initial jurors
 - Examine 18 (“six pack”)
 - Examine 24 jurors
 - Others may examine the entire panel of prospective jurors.

Note: The seating chart format will need to be adapted to the method used.

Examination of prospective jurors in a criminal case. [CCP 223]

- In a criminal case, the court shall conduct an initial examination of prospective jurors. The court may submit to the prospective jurors additional questions, as it deems proper.
- Upon completion of the court’s initial examination, counsel for each party shall have the right to examine any or all of the prospective jurors. The court may limit the oral and direct questioning by counsel.

11. Types of Challenges

- a. Challenge for Cause (CCP225 (b))
 - By court – a juror is obviously not acceptable for this trial.
 - By Counsel – the right to challenge a prospective juror for a specific reason.
 - All challenges for cause must be made before peremptory challenges are used. (CCP 226(c))
- b. Peremptory Challenge (CCP 231)

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

- The right to challenge a prospective juror without assigning a reason for the challenge.
- Peremptory Challenges commence with the Prosecutor/people.

c. Challenges for Cause [CCP 225 (1)]

- CCP 225 (1) (A)--General disqualification—that the juror is disqualified from serving on the trial
- CCP 225 (1) (B)--Implied bias—As, when the existence of the facts as ascertained, in judgment of law disqualifies the juror
- CCP 225 (1) (C)--Actual bias—the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party

Note: all challenges for cause to be made before peremptory challenges

d. Peremptory Challenges [CCP 231]

Definition: The right to challenge a juror without assigning a reason for the challenge.

- Peremptory challenges commence with the prosecutor/people.
 - (1) Ten for each side
- For two or more defendants, ten joint plus five additional for each defendant. Prosecutor/People entitled to challenges equal to number of combined defense challenges
- If the charge being tried is punishable with a maximum term of imprisonment of 90 days or less, each side is entitled to six peremptory challenges.
- FYI—If the crime is punishable by death or life imprisonment, each side is entitled to twenty peremptory challenges.

12. Swearing the Jury to Try the Cause

As soon as the selection of the jury has been completed the following oath shall be obtained and acknowledged by the statement, "I do".

TRIAL/ALTERNATE JURORS OATH [CCP 232(b)]

DO YOU AND EACH OF YOU UNDERSTAND AND AGREE
THAT YOU WILL WELL AND TRULY TRY THE CASE NOW
PENDING BEFORE THIS COURT, AND A TRUE VERDICT
RENDER ACCORDING ONLY TO THE EVIDENCE PRESENTED
TO YOU AND TO THE INSTRUCTIONS OF THE COURT?

13. Selection of Alternate Jurors (CCP 234)

- The Court will determine whether or not alternate jurors are required, and, if so, how many.
- Alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn.
- Each side, or each defendant, shall be entitled to as many peremptory challenges to the alternates as there are alternate jurors called.
- After the challenges are exhausted, or before, if counsel are satisfied with the alternates, the Court will direct the clerk to administer the oath to the alternates.
- The alternates shall attend the trial at all times in the company of the other jurors, but shall not participate in deliberations.

14. Jury List

- Upon completion of jury selection, a list of those jurors and alternates trying the cause needs to be completed. The jury clerk/commissioner may need an accurate listing of those jurors sworn and those excused. Follow the procedure for your court.
- Depending upon the procedure in your court, the jury clerk / jury commissioner may prepare this list for you.

15. Jury Admonishment – PC 1122, CALJIC .050

- Provides that the judge must admonish a criminal jury before the Prosecutor's/People's opening statement. This admonishment states the jury's functions and the court's instructions such as:
 - a. Not to discuss the case
 - b. Not to view the premises
 - c. Not to read or listen to news coverage of the case
 - d. Not to "sell their story prior to and within 90 days of discharge from the case
 - e. Report any attempt to influence jurors.

Note: A notation that the admonishment was given must be noted in the minutes.

16. Opening Statements

Definition: Brief outline by counsel as to what the evidence will be and what it will prove. (a "road map" of the trial, as seen by each side)

- The Prosecution/People and the Defense are entitled to make opening statements before evidence is presented.
 - a. Sequence
 - 1. Prosecution/People
 - 2. Defense
 - b. The Defense may choose to reserve opening statement until the defendant's case-in-chief.
 - c. The Defense may choose to waive opening statement.

17. Evidence Phase (The Prosecution/People will proceed first)

- a. Witness—One who is called to testify before a court.
 - Types
 - (1) Percipient
 - (2) Expert
 - (3) Character
 - b. Minute entries must include the following:
 - (1) Exact name of witness (including any title)
 - (2) Called on whose behalf
 - (3) Whether adverse witness (EC 776)
 - (4) Whether called out of order
 - (5) Whether previously sworn
 - c. Exhibits—Any physical object or document identified produced by a court...as a voucher, or in proof of facts... and is marked for identification and made a part of the case. (*Black's Law Dictionary*)
 - d. Marked for identification - The first time that an exhibit is referred to or given to a witness for review:
 - (1) A tag or label is affixed with an identifying number or letter.
 - (2) It is described in open court for the record.
 - (3) The number/letter, offering party, and the description of the exhibit must be listed in the minutes.
- Note: Once introduced, marked for identification only, or received/admitted into evidence, the exhibit becomes the sole responsibility of the clerk. (PC 1417)**
- e. Received into Evidence
 - (1) Counsel offer exhibits to be received into evidence

(2) Court rules on receipt of exhibits

(3) All exhibits received will be noted in the minutes and on exhibit list

(4) The date the exhibit is received should be noted on the exhibit tag

f. Special Handling - Many criminal exhibits will require special handling:

(1) Weapons, drugs, and valuables must be locked up/secured during recesses and at the end of each day. Follow your Courts' procedure.

(2) Guns must be fitted with trigger locks or otherwise made to be inoperable. The bailiff should check all weapons.

(3) Blood vials, urine jars, syringes and bloodstained items should be pre-packaged in plastic bags or some other type of protective packaging. Notify the Court of any exhibit you believe might cause a health hazard. (see PC 1417.3 for special handling of toxic exhibits)

(4) Any exhibit(s) returned are to be noted in minute order with name or agent retaining the exhibit(s) (PC 1417.2)

18. Motion for Judgment of Acquittal

(PC 1118 - Court Trial - - PC 1118.1 - Jury Trial)

- a. At the end of the Prosecution's/People's case-in-chief (or at the close of evidence on either side), the defense may make a motion for the Court to enter a judgment of acquittal based on the fact that the People failed to meet the burden of proof.
- b. Motion is made under PC 1118 in a court trial.
- c. Motion is made under PC 1118.1 in a jury trial.
- d. If PC 1118 or PC 1118.1 is granted, case is dismissed.
- e. If PC 1118 or PC 1118.1 is denied, case proceeds to the defense case and closing statements.

19. Closing Argument - Statements by counsel made in an attempt to persuade the jury or the Court that the evidence proves the position of their client.

a. Sequence

1. People/Prosecution
2. Defense
3. People's/Prosecution's Rebuttal

20. Jury Instructions

Definition written instructions of the law to the jury pertaining to the case.

a. Selecting instructions:

- Counsel select jury instructions they feel pertain to the case.
- Court and counsel confer
- Court hears argument regarding the instruction selected
- Court rules as to the specific jury instructions that will be presented to the jury.
- All instructions must indicate the requesting party and be endorsed by the court. (CRC 229, PC 1127)

b. Refused and withdrawn instructions are retained by the clerk for placement in the case file (if instructed to do so by the Court)

c. The agreed upon instructions (those to be given) are read to the Jurors by the Court.

d. A clean copy of the given instructions, exclusive of any indication of the requesting party, are provided to the jury for reference during deliberations, upon request of the jury or discretion of the court (PC 1093(f))

NOTE: Your judge may require you to supply the basic packet of jury instructions

21. Jury Deliberations

a. Bailiff sworn to take charge of the jury

b. What goes in with the jury? (PC 1137)

- Verdict forms

(1) Separate form for each count, Guilty or Not Guilty for each count are provided.

- (2) Additional forms for lesser-included offenses, if applicable.
 - (3) Content must conform to the charging document / accusatory pleading.
- c. A set of jury instructions
 - (1) The Court may supply the jury with instructions.
 - (2) The Court may supply the jury with instructions upon their request.
- d. Exhibits that have been received into evidence only. Those that have only been marked for identification do not go to the jury.
- e. Any written stipulations that may have been agreed upon by counsel and were received and filed with the Court.

22. Alternate Jurors

- a. May be ordered to report to jury assembly room and to remain there during deliberations
- b. May be ordered to be on call during deliberations. Be sure to get a telephone number where the alternate juror can be reached.

NOTE: Parties may stipulate that the alternate jurors need not remain in the custody of the sheriff.

23. Notes Received from the Jury

- a. Given to Judge
- b. Counsel are notified
- c. Response prepared/hearing held
 - (1) Response may be in writing
 - (2) Jurors may be called back into the courtroom for verbal response
- d. Minute entry made regarding note/response
- e. Note is numbered, filed and maintained in the court file

24. Verdict/Mistrial

- a. Verdict
 - Verdicts are reviewed by the Court and given to the clerk (PC1151, 1157, 1158, 1158a)
- b. All **dated and signed** verdict forms are placed in count number order
- c. Verdicts are read in open court with defendant, counsel, and all jurors present.
 - Reading includes county, court, cause and foreperson's name. (Follow your courts' policy re: juror identification information.)
- d. At conclusion of verdicts, the Court/clerk may inquire of the jury:
 - (1) Is this your verdict as read?
 - (2) Jury responds as a group

25. Polling

Definition; A formal request asking each juror individually whether they agree with the verdict.

- May be requested by either party or waived. Follow your bench officer's direction.
- If requested, use your prepared jury list and ask jurors to answer yes or no the following:

Juror #1, is this your verdict? (Follow this process for each juror and each verdict)

a. If waived:

(1) Waiver is noted in minutes

(2) Verdict(s) are recorded

(3) Waiver of reading of verdict as recorded in minutes
(PC 1164)

NOTE: Upon recording of a jury's verdict in a criminal jury proceeding, the court's record of personal juror identifying information of trial jurors shall be sealed until further order of the court. [CCP 237(a)(2)]

26. Mistrial

- a. Jury informs court that they are unable to reach a verdict
- b. Court declares a mistrial (Court obtains count/split – record in minute order.) (PC1140)
 - Jury is thanked and excused from further service on this case.
 - New dates are set (pretrial, jury trial) (The case must go to trial within 30 days from the date of the mistrial on a misdemeanor absent a time waiver.) (PC 1141)

27. Post Verdict Matters

- (1) Defendant, if found guilty, may waive a probation report and request immediate sentencing.
- (2) Court will sentence forthwith.

28. Motions for New Trial

- a. Check your local rules of court as to whether motion must be in writing or if it can be oral.
- b. Must be ruled upon prior to sentencing.

29. Sentencing/Judgment (PC 1449)

- a. Shall not be less than six hours nor more than five days after the verdict unless the defendant waives time.
 - (1) The Court may extend the time for sentencing not more than 10 days for the purpose of hearing or determining any motion for a new trial.
 - (2) The Court also may extend the time for sentencing not more than 20 judicial days if probation (for pre-sentencing report) is requested. Upon request of the defendant or the probation officer, that time may be extended for not more than 90 additional days.
 - (3) The defendant may waive time and request immediate sentencing.
 - (4) The Court may set a future date for sentencing. The defendant must waive time for sentencing
 - If the case is being referred to the Probation Department for a pre-sentence report, the clerk should prepare and send a referral to the Probation Department. (refer to PC 1203d and PC 1203.10 for additional information)

(5) Status of Defendant

- (a) At the conclusion of the trial, the status of the defendant must be addressed—Is his/her current status of release to continue?
- (b) If the defendant is remanded into custody after a guilty verdict, a Remanding Order must be prepared (include amount of bail set) and forwarded to the jail.
- (c) If the defendant is ordered released from custody following the reading of the verdict, a Release Order must be prepared and forwarded to the jail.

TAB V – DOMESTIC VIOLENCE**Q. DOMESTIC VIOLENCE**

1. **Definition:** Pursuant to Section 6211 of the Family Code, “Domestic violence” is abuse perpetrated against any of the following persons:

- A spouse or former spouse.
- A co-habitant or former co-habitant, as define in FC 6290
- A person with whom the respondent is having or, has had, a dating or engagement relationship.
- A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
- A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- Any other person related by consanguinity (i.e.: by blood, such as a sibling) or affinity within the second degree (i.e.: by marriage, such as an in-law).

2. **Domestic Violence Filing**

- a. The District Attorney’s office will determine if a case is domestic violence related at the time of filing and identify these cases.
- b. Generally, charges that would receive such a designation are as follows:
 - PC 273.5(a) - corporal injury to spouse, co-habitant, etc.
 - PC 273.5(e) - inflict injury on spouse, co-habitant, etc.
 - PC 273.6(a) - disobey domestic relation court order
 - PC 273.6 - violation of protective order
 - PC 243(e)(1) - battery to spouse, co-habitant, etc.
 - PC 273a(b) - child abuse

- c. Other charges may be included if the district attorney feels they originate from a domestic violence issue.

3. Arraignment

- a. After filing, these cases will be set for arraignment. As in any other criminal case, the defendant may represent himself, retain private counsel, or request court appointed counsel.
- b. At the arraignment, a Protective Order is issued and the case may be set pursuant to local rules and procedures.
- c. A protective order must be completed, served on defendant and filed.
[PC 136.2]
- d. Before any person who is arrested for PC 273.5 may be released on bail in an amount that is either more or less than the scheduled bail amount, or released on his/her own recognizance, a hearing shall be held in open court before the magistrate or judge with two-court days written notice.
[PC 1270.1 et seq.]

4. Pre Trial

- a. At the pre trial stage the people will be represented by a deputy district attorney. The defendant may request a continued pre trial, a trial by court or jury, or change his or her plea to guilty.
- b. If the defendant chooses to change his / her plea to guilty, there is a written waiver of rights form (Tahl form) specifically for domestic violence charges that may be used.

5. Mandatory Minimum Probationary Sentence

Pursuant to PC1203.097, any person convicted for a crime in which the defendant is a person defined in FC 6211 (Family Code), as described above, the terms of probation shall include all of the following:

- a. A minimum probation period of 36 months (3 years)
- b. A criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse and harassment and if appropriate, containing the residence exclusion or stay-away conditions.
- c. Notice to the victim of the disposition by the district attorney or
- d. Victim Witness Office.
- e. Booking the defendant within one week of sentencing if not already done.
- f. A minimum fee payment of \$400.00 to the Domestic Violence Fund. The court may reduce or waive if the court finds that the defendant does not have the ability to pay this fee. A minimum o
- g. Successful completion of a Batterers' Treatment Program for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two-hour class time duration. Defendant must be enrolled within 30 days from the date of sentence, or if in custody within 30 days of release.
- h. Order the defendant to comply with all terms and conditions of probation.
- i. Order the defendant to perform a specified amount of appropriate community service, as designated by the court.
- j. If the program finds the defendant is unsuitable, the program shall immediately contact the Probation Department or the court and the case shall be re-calendared for hearing or referral to an appropriate alternative batterers' treatment program.

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

- k. Upon recommendation of the program, the court shall require a defendant to participate in additional sessions through the probationary period, unless it finds that it is not in the interests of justice to do so. These reasons must be stated on the record and entered into the minutes.

Probation conditions may include, in lieu of a fine, but not in lieu of the D.V. fund fee:

- l. Payment to a Battered Women's Shelter, up to a maximum of \$5,000.
- m. Restitution to the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.
- n. Defendants on conditional probation should be referred, pursuant to local rules of court and procedures, for further direction regarding Batterers' Treatment Programs. Any defendant placed on formal probation should be ordered to report to the Probation Department. If the defendant is in custody, a date should be set for the above reporting requirements.

6. Protective Order

- a. Upon arraignment of a domestic violence case the court will issue a Protective Order pursuant to Penal Code Section 136.2. Upon sentencing the court will order a Protective Order issued pursuant to Penal Code Section 1203.097.
- b. Criminal Court Protective Order issued at the arraignment (deputy district attorney may not be present) pursuant to local rules and procedures.
- c. The judge will sign the protective order.
- d. The court clerk will enter the following minute entry:
 - Protective Order signed, served and filed
 - Have no contact with (victim's name).
 - The bailiff or court's designee will serve the defendant with a copy of the order.

7. Post Judgment Process

- a. The court will monitor the defendant's post judgment progress in mandatory programs, payment of fines and fees, community service, etc. The defendant will be required to report to the court, whether they are on formal or informal probation, on a monthly basis with written progress reports until the court is satisfied with compliance.
- b. Upon sentencing, the court will set a 30-day report hearing for proof of enrollment in any mandatory programs.
- c. Thereafter, the court will set 90-day progress reports until the requirements of probation are met.
- d. A Victim Witness representative or the deputy district attorney may assist the court in notifying the victim of the next court date.
- e. If the defendant fails to comply with any court orders, the case may be set for a violation hearing, or the court may find the defendant in contempt and order sanctions.
- f. It is important to note in the minutes the reason the defendant failed to comply with any of the court's orders, such as why the defendant missed a counseling session, did not complete community service, etc.
- g. After sentencing the defendant and/or victim may motion the court to modify the protective order to allow contact. If the court grants the motion, usually only if certain conditions have been met, a new Protective Order will be issued that supercedes all previous orders. Minutes should reflect modification and that orders was signed, served and filed.
- h. Pursuant to PC 1203.097(12)(6), defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

8. Mandatory Sentence Reference Chart**a. Domestic Violence Counseling: Conditions of Probation**

- 36 months summary probation
- Protective order
- Notice to the victim of the case disposition
- Booking the defendant within 1 week of sentencing if not already booked
- Minimum \$400 domestic violence fee. *(court may reduce or waive if a finding is made and reason is stated on the record)*
- Attendance/Completion to a probation approved **batterers' treatment program**, to attend not less than 1 year. *(periodic reports by the program every three months)*
- Specified amount of community service
- Other conditions may include: in lieu of a fine, payment to a battered woman's shelter and or restitution to the victim

Special note: If an individual is also convicted of child abuse/endangerment on the same case, the Court may order a parenting component to the Batterers' Treatment Counseling in lieu of a separate Child Abusers' Counseling program. ***This program will be served concurrently and is 6 months in length.***

b. Child Abuse: Conditions of Probation PC 273a

- Imprisonment in a county jail not exceeding 1 year
- Protective order
- Attendance/Completion to a probation approved child abusers' counseling program, to attend no less than 1 year. (enrollment within 30 days, progress quarterly)
- Other conditions may include:
 - (1) Alcohol/drug component**
 - (2) Child abusers' counseling

*****This program would run concurrent to the Child Abuser Counseling and last for a duration of 6 months.***

c. Child Abuse: Conditions of Probation PC 273d

- 36 months probation
- Imprisonment in the county jail for not more than one year, by a fine up to six thousand dollars, or by both
- Protective Order
- Attendance/Completion to a probation approved child abusers' counseling program, to attend no less than 1 year. (enrollment within 30 days, progress quarterly)
- Other conditions may include:
- Alcohol/drug component**
- Child abusers' counseling

*****This program would run concurrent to the Child Abuser Counseling and last for a duration of 6 months.***

d. Anger Management

- Probation approved program
- Provides 10 weeks of group counseling
- Violation **can not** be a domestic violence related offense

If the defendant is ordered to complete Anger Management Counseling, the court should specify how many sessions the defendant is to complete or may state that the counselor is to determine the amount of sessions based on the defendants "intake interview".

e. Parenting Classes

- Probation approved program
- Minimum 6 weeks maximum 24 weeks

TAB VI – PROPOSITION 26/ PC 1210**R. PC 1210 DRUG TREATMENT PROGRAM, PROPOSITION 36****1. Filing of the Complaint**

At the time of review for complaint filing, all non-violent misdemeanor and felony drug charge arrests are reviewed by the District Attorney's Office for both charge and defendant eligibility pursuant to PC 1210 (Prop. 36) (legislation effective July 1, 2001).

NOTE: The Prosecution/People and Defense counsel are acting as NON – ADVISARIAL roles.

a. Eligible/Ineligible/Pending

If the defendant is determined to be “Ineligible” the case will be processed following the customary prosecutorial track. However, if the defendant's eligibility is “pending”, the eligibility will be determined by the prosecutor and represented in court.

2. Eligible Felony/Misdemeanor Complaints

a. Eligible Defendants: Any defendant charged with a “non-violent drug possession” offense including sections 11054, 11055, 11056, 11057, 11058 and 11550 of the Health and Safety Code. The term “non-violent drug possession” does not include the possession for sale, production, or manufacturing of any controlled substance. [PC 1210(a)]

b. Ineligible Defendants: Some offenders are excluded pursuant to PC 1210.1(b), including those who ‘refuse’ treatment [PC1210.1 (b)(4)] and those that are unamenable to treatment by the court [PC 1210.1(c)(2)].

c. Not all defendants deemed eligible receive treatment pursuant to PC 1210 (Prop. 36). It is anticipated that the majority of offenders will enter into the PC 1000, Deferred Entry of Judgment Program. The existing procedures in place to support PC 1000 are not impacted.

3. **Drug Treatment Program defined:** A drug treatment program or provider that is a state licensed and/or certified community drug treatment program, which may include one or more of the following:

- a. Outpatient treatment
- b. Half-way house treatment
- c. Narcotic replacement therapy
- d. Drug education or prevention courses
- e. and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence

This also includes drug treatment programs operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs. Such programs shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by the code section. This does not include drug treatment programs offered in a prison or jail facility. [PC 1210 (b)]

4. **Program Entry Points**

a. **Imposition of Sentence**

(1) Upon conviction of a non-violent drug possession offense, the defendant shall receive probation and as a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, and literacy training and/or community service. The court **may not** impose incarceration as an additional condition of probation. [PC 1210.1(a)]

(2) Aside from the limitations imposed in the code section, the trial court is not limited in the type of probation conditions it may impose.

(3) A monitoring date *may* be set upon sentencing in a designated courtroom for progress.

(4) Within 7 days of the order imposing probation, the probation department shall notify the drug treatment provider designated to provide treatment. [PC 1210.1(c)]

(5) Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department.

- (6) On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the probation department.

5. Violations of Probation

If probation is revoked by the court, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of PC 1210.1.

a. Non-drug related probation violations

If defendant violates probation by being arrested for a nonviolent drug possession offense, or by violation a non-drug-related condition of probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

b. Drug Related Probation Violations

If a defendant violates probation as described in 1210.1(e)(3), the court shall conduct a hearing to determine whether probation shall be revoked. The court may also take the following action:

- **Probation Violation 1:** Revoke probation if proved by a preponderance of the evidence that the defendant poses a danger to the safety of others or is unamenable to drug treatment. If the court does not revoke probation, it may intensify or alter the drug treatment plan.
- **Probation Violation 2:** Revoke probation if proved by a preponderance of the evidence that the defendant poses a danger to the safety of others or is unamenable to drug treatment. If the court does not revoke probation, it may intensify or alter the drug treatment plan.
- **Probation Violation 3:** Drug related; if alleged violation is proved, the defendant is **not eligible** for continued probation under PC 1210.1(a). Offender's probation is revoked, and then sentence is imposed on applicable law.

6. Eligibility Determined at Probation Violation Proceeding – Sentence Modification

- a. The court may modify the existing terms of probation to include treatment pursuant to PC 1210.1(e)(3)(D), if the defendant and charges qualify.
- b. If the court chooses to modify probation and sentence pursuant to PC 1210.1 (e)(3)(D), the probation type should be modified to Formal (supervised) Probation. The addendum to the Tahl form for PC 1210.1 cases and the Consent for Disclosure of Confidential Information must be filed.

7. Eligibility Determined at PC 1000 fallout proceeding - Sentence Imposed

Sentence imposed, including treatment pursuant to PC 1210.1. Set for progress report as indicated previously in the procedures.

8. Found Guilty at Trial

Sentence imposed and set for progress report as indicated previously in the procedures.

9. Compliance

- a. At any time after completion of drug treatment, a defendant may petition the sentencing court for a dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction shall be set aside and the charge(s) dismissed. [PC1210.1 (d)(1)]
- b. The defendant may indicate in response to any question that he or she was not arrested or convicted for the offense (exceptions noted for certain public office or law enforcement employment inquiries).
[PC 1210.1(d)(3)]

TAB VII – DEFERRED ENTRY OF JUDGEMENT**S. DEFERRED ENTRY OF JUDGEMENT CASES****1. Qualifications**

- a. A defendant is eligible for deferred entry of judgment if charged with a violation of Section 11350, 11357, 11358 (if for personal use), 11365, 11368 (if for personal use), 11377, or 11550 of the Health and Safety Code, or Section 653(f) of the Penal Code (if for personal use), 381 or 647(f) of the Penal Code (if under the influence of a controlled substance). [PC 1000(a)]
- b. All of the following must apply to the defendant:
 - No prior convictions of offenses involving controlled substances
 - Charge did not involve violence or threatened violence
 - No evidence of a violation relating to narcotics or restricted dangerous drugs other than those violations listed above.
 - No felony conviction within the last five years
- c. Successful completion of probation or parole without ever being revoked
- d. The defendant has not completed or been terminated from diversion or deferred entry of judgment within 5 years of the current offense

2. Program Entry Points [PC 1000.1, 1000.2, 1000.3]

- a. The prosecuting attorney determines if defendant is eligible and notifies the defendant and his or her attorney of the determination.
- b. The court may grant deferred entry of judgment in lieu of trial, provided that the defendant pleads guilty to each charge and waives time for pronouncement of judgment.
- c. The defendant will be required to complete a court-approved program. The period during which deferred entry of judgment is granted shall be for no less than 18 months and no longer than 3 years.
- d. Progress reports shall be filed with the court as directed by the court.
- e. At the time deferred entry of judgment is granted, any bail bond or undertaking on file by or on behalf of the defendant shall be exonerated and the court shall enter an order so directing.

- f. If it appears to the prosecuting attorney, the court or the probation department that the defendant is performing ***unsatisfactorily*** in the assigned program, or that the defendant is not benefiting from the program, a motion may be made for entry of judgment. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be pronounced.
- g. If the court finds that the defendant has been convicted of a crime or that the defendant has engaged in criminal conduct, rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilty to the charge(s) pled, enter judgment and schedule a sentencing hearing.
- h. If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge(s) shall be dismissed.
- i. Prior to dismissing the charge(s) the court shall consider defendant's ability to pay, if he or she has not paid, a diversion restitution fee in the amount of not less than \$100 and not more than \$1000. [PC 1000.90(b)]

3. Local Drug Court

Those cases that do not qualify for PC 1210 (Prop 36) and/or Diversion may still be processed by the local drug courts pursuant to their guidelines.

Relevant Code Section

WEST'S ANNOTATED CALIFORNIA CODES - PENAL CODE

§§ 1210. Definitions [FN1]

<Effective July 1, 2001,>

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code:

(a) The term "nonviolent drug possession offense" means the unlawful possession, use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance.

(b) The term "drug treatment program" or "drug treatment" means a licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

WEST'S ANNOTATED CALIFORNIA CODES - PENAL CODE

§§ 1210.1. Possession of Controlled Substances; Probation; Exceptions [FN1]

<Effective July 1, 2001,>

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, and literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to either of the following:
(1) Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who: (A) While using a firearm, unlawfully possesses any amount of (i) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (ii) a liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine.

(B) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who (A) has two separate convictions for nonviolent drug possession offenses, (B) has participated in two separate courses of drug treatment pursuant to subdivision (a), and (C) is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.

(c) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the probation department.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Dismissal of charges upon successful completion of drug treatment

(1) At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed never to have occurred. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

(2) Dismissal of an indictment or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(e) Violation of probation

(1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug-related probation violations If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug-related probation violations

(A) If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for a nonviolent drug possession offense or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(C) If a defendant receives probation under subdivision (a), and for the third time violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

(D) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(E) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation a second time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or that the defendant is unamenable to drug treatment. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(F) If a defendant on probation at the effective date of this act for a nonviolent drug offense violates that probation a third time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

TAB VIII – PRELIMINARY EXAMINATION HEARINGS**T. Preliminary Examination Hearing (Felonies)**

Purpose: To determine if probable cause exists to believe that the defendant has committed a felony [PC 866(b)]

1. Preliminary Examination Hearing

- a. Prosecutor/People present evidence—witnesses and exhibits
- b. Witnesses to be sworn and examined in the presence of the defendant and may be cross-examined (PC 865)
- c. At the conclusion of the Prosecutor's/People's case, the defense may call witnesses to be sworn and examined (PC 866)
- d. The Court may exclude all witnesses who have not been examined. The court may direct the witnesses to be separated and admonish them not to discuss their testimony with each other (PC 867)
- e. Preliminary hearings are open to the public. The magistrate may find that it is necessary to close the hearing (PC 868)
- f. At the conclusion of all evidence presented, the Prosecutor/People and Defense counsel may argue the cause.

2. Results:

- a. Court finds no crime committed and/or no sufficient cause to believe the defendant guilty. Court will discharge the defendant and dismiss the case. (PC 871).
- b. Court reduces charge to a misdemeanor. Defendant is held for trial in Superior Court at the preliminary jurisdiction level [PC 17(b)].
- c. Defendant pleads guilty and case is certified to Superior Court at the general jurisdiction level. (certified plea).
- d. Defendant is held to answer and bound over to Superior Court at the general jurisdiction level. In this instance, the Court will:

Criminal Courtroom Procedures, Misdemeanours and Felony Complaint Processing

- (1) Set date for arraignment in Superior Court at the general jurisdiction level within 15 days.
 - (2) Address the bail status of the defendant.
- e. The court reporter must file a transcript of the preliminary hearing within 10 days [PC869(e)].
 - f. The Prosecutor/People must file the Information within 15 days of the Preliminary Hearing [PC 860, CRC 227.3(1)].

Note: The preliminary hearing shall be completed at one session or the complaint dismissed unless the Court, for good cause shown by affidavit, postpones it. The postponement shall not be for more than 10 days unless:

- g. The defendant personally waives right to a continuous preliminary examination.
 - h. The prosecution establishes good cause for a postponement beyond the 10-day period. If the Court grants the postponement beyond the 10 court day period, if the defendant is in custody, he/she shall be released. [PC 859(b)].
- The preliminary examination shall not be postponed for more than 60 days from the date the postponement was granted unless the defendant consents.
 - The court may conduct brief court matters as long as the court's time is substantially devoted to the preliminary examination hearing.

3. Preliminary Examination Hearing Minutes

a. Sequence

Minute entries need to be made and time can be noted when:

- Court convenes each day
- For all recesses
- Adjournment at the end of the day

b. Minute Heading

Heading can contain:

- Current Date
- Court name
- Division/Department number
- Names of court staff members
- Name of court report

c. Case Information for Minutes

Case information to be included in minutes may contain:

- Case number
- Case title
- Attorneys appearing for each party
- Defendant's appearance
- If an interpreter is present, include his/her name and the language being interpreted

d. Body of Minutes

Must reflect all occurrences of the hearing such as:

- Names of all witnesses and on whose behalf called
- Exhibit Information:
 - (1) Number/letter
 - (2) Offering party
 - (3) Description (examples)
 - (a) "A photograph of a red Honda Prelude"
 - b) "A copy of a contract dated August 14, 1996"
 - (4) Status
 - (a) Identification (marked for Identification)
 - b) Received (received into Evidence)
- Stipulations (examples):
 - (1) "Parties stipulate for preliminary hearing purposes only that the contraband seized contained cocaine"
 - (2) "Parties stipulate for preliminary hearing purposes only that the blood alcohol level of the defendant when booked at the Orange County Jail was .15"

- Waivers (example):
“Defendant waives his/her right to a continuous preliminary hearing”
- Motions
- Court orders, rulings, findings
- Future hearing date(s), time(s), place(s)

Note: If the defendant is held to answer at the conclusion of the preliminary hearing, the magistrate must complete a Held to Answer commitment. (PC 876)

4. Waiver of Preliminary Hearing

a. Appearing Minutes

- PC 860 allows a defendant to waive his right to a preliminary examination hearing.
- The People/Prosecutor and the Court must consent to the waiver.
- Upon completion of the waiver, the Preliminary Jurisdiction must make the order to hold the defendant to answer for arraignment in the General Jurisdiction of the Superior Court.
- The clerk must prepare a Held to Answer commitment pursuant to PC 877.
- The People/Prosecutor must file the Information within 15 days thereafter.
- Please refer to the previous chapter for minute entry information. Note that there are no witnesses called when a defendant waives his/her right to a preliminary hearing.

TAB IX

U. OATHS

WITNESS OATH (EC 710, CCP 2094)

DO YOU (AND EACH OF YOU) SOLEMNLY **STATE**
THAT THE EVIDENCE YOU ARE ABOUT TO GIVE
IN THE CASE NOW PENDING BEFORE THIS COURT,
SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
NOTHING BUT THE TRUTH, SO HELP YOU GOD?

WITNESS – AFFIRMATION (EC 710, CCP 2094)

DO YOU **AFFIRM**, UNDER PENALTY OF PERJURY,
THAT THE EVIDENCE YOU ARE ABOUT TO GIVE IN
THE CASE NOW PENDING BEFORE THIS COURT,
SHALL BE THE TRUTH, THE WHOLE TRUTH,
AND NOTHING BUT THE TRUTH?

CHILD UNDER 10 YEARS OF AGE OATH (EC 710)

DO YOU PROMISE THAT EVERYTHING YOU
TELL HERE TODAY WILL BE THE TRUTH, THE
WHOLE TRUTH, AND NOTHING BUT THE TRUTH

OATH TO PROPECTIVE JURORS (CCP 232(a))

DO YOU AND EACH OF YOU, UNDERSTAND AND AGREE
THAT YOU WILL ACCURATELY AND TRUTHFULLY ANSWER,
UNDER PENDALTY OF PURJURY, ALL QUESTIONS
PROPOUNDED TO YOU CONCERNING YOUR QUALIFICATIONS
AND COMPETENCY TO SERVE AS A TRIAL JUROR IN THE
MATTER PENDING BEFORE THIS COURT, AND THAT
FAILURE TO DO SO MAY SUBJECT YOU TO CRIMINAL PROSECUTION?

AFTER JURY IS COMPLETE OATH (CCP 232(b))

DO YOU AND EACH OF YOU UNDERSTAND AND
AGREE THAT YOU WILL WELL AND TRULY TRY THE
CASE NOW PENDING BEFORE THIS COURT, AND A TRUE
VERDICT RENDER ACCORDING ONLY TO THE EVIDENCE
PRESENTED TO YOU AND TO THE INSTRUCTIONS OF THE
COURT?

OATH TO BAILFF TO TAKE CHARGE OF JURY (PC 1121, CCP 613)

DO YOU SOLEMNLY STATE THAT YOU WILL TAKE
CHARGE OF THE JURY AND KEEP THEM TOGETHER,
THAT YOU WILL NOT SPEAK TO THEM YOURSELF NOR
ALLOW ANYONE ELSE TO SPEAK TO THEM UPON ANY
SUBJECT CONNECTED WITH THIS CASE, EXCEPT BY
ORDER OF THE COURT AND WHEN THEY HAVE AGREED
UPON A VERDICT, YOU WILL RETURN THEN INTO
THIS COURT, SO HELP YOU GOD

OATH TO BAILIFF (JURY TO SCENE) (PC 1121, CCP 613)

DO YOU SOLEMNLY STATE THAT YOU WILL
SUFFER NO PERSON TO SPEAK TO OR COMMUNICATE
WITH THE JURY, NOR TO DO SO YOURSELF, ON ANY
SUBJECT CONNECTED WITH THIS CASE, AND THAT
YOU WILL RETURN THEM INTO COURT WITHOUT
UNNECESSARY DELAY AFTER A VIEW OF THE
PLACE OR PROPERTY?

OATH TO INTERPRETER (EC 751)

DO YOU SOLEMNLY STATE THAT YOU WILL
WELL AND TRULY INTERPRET THE ENGLISH
LANGUAGE INTO THE _____
LANGUAGE AND THE _____

LANGUAGE INTO THE ENGLISH LANGUAGE, TO
THE BEST OF YOUR ABILITY, SO HELP YOU GOD?

OATH TO INTERPRETER - SIGN LANGUAGE (EC 751)

DO YOU SOLEMNLY STATE THAT YOU WILL
MAKE A TRUE INTERPRETATION TO THE
WITNESS IN A LANGUAGE THAT THE WITNESS
UNDERSTANDS AND THAT YOU WILL MAKE A
TRUE INTERPRETATION OF THE WITNESS'
ANSWERS TO THE QUESTIONS IN THE ENGLISH
LANGUAGE TO THE BEST OF YOUR ABILITY,
SO HELP YOU GOD?